



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL SUIT NO.86 OF 2013**  
**SLYVIA MARIA HALLAL - WEIS.....PLAINTIFF/APPLICANT**

-VS-

- 1. RASHID ABDALLA MWAMZUNGU**
- 2. REANATE WOLF WEIN**
- 3. REGISTRAR OF LANDS (KWALE COUNTY).....DEFENDANTS**

**RULING**

This is the Notice of Motion dated 15<sup>th</sup> December 2016.

It seeks orders:

**1. Spent**

**2. THAT the Honourable Court be pleased to issue temporary injunction order restraining the defendants by themselves, their servants and/or agents and/or any person acting in their authority from transferring letting, selling and/or doing any dealings connected to LAND TITLE NO.KWALE/UKUNDA/4512 until further orders from this court or until determination of this suit and/or application.**

**3. Costs of this application be in the cause.**

The application is supported by the affidavit of Sylvia Maria Hallal-weiss the plaintiff/applicant herein sworn on the 15<sup>th</sup> December 2016.

The main grounds relied upon are stated on the face of the application.

Basically that the suit property KWALE/UKUNDA/4512 was purchased by the plaintiff and the developments initiated by the plaintiff.

That the defendants conspired to issue a title to the 1<sup>st</sup> defendant without involving the plaintiff in the process. The plaintiff reported the matter at Diani Police Station under **OB/No/27/27/9/2016**.

The application is opposed. The 1<sup>st</sup> defendant has filed grounds of opposition through his advocates.

I have considered the application, the supporting affidavit and the annexures I have also considered the grounds of opposition. The 1<sup>st</sup> defendant's contention is that having been registered as the sole proprietor his title is indefeasible as there was no fraud, illegality or undue influence that was conducted prior to registration in his favour.

I have considered the pleadings, the application the supporting documents. Having done so, this appropriate to consider the facts that have emerged and the legal principles applicable. The principles were laid down in the precedent setting case of **GIELLA –VS- CASSMAN BROWN (1993 EA 358)**. They are as follows:-

*First the applicant must show that he has a prima facie with probability of success at the trial.*

*Secondly, normally an injunction will not be granted unless the applicant shows that damages would not be an adequate remedy for injury suffered or likely to be suffered unless the injunction is granted.*

*Thirdly, if the court is in doubt it will decide the application on a balance of convenience.*

The plaintiff/applicant has annexed a copy of the title deed in her names. It is annexed to the application and marked "SMH1". It was issued on 24/5/2011. She also annexed several telegraphic money transfer forms as "SMHW2" confirming that she remitted monies for the purchase and developments on the suit property. She annexed a copy of the deed issued to the 1<sup>st</sup> defendant marked "SMHW3". It shows that the same was issued on 7.2.2012.

It is not clear how the 1<sup>st</sup> defendant acquired the property, as he has not sworn an affidavit in response to the application. I find that the plaintiff has demonstrated that she has a prima facie case with a probability of success. I also find that she stands to suffer irreparably should the 1<sup>st</sup> defendant dispose of the suit property to a third party.

The applicant cannot demonstrate fraud by the 1<sup>st</sup> defendant at this stage but the trial. Having considered all the facts, I find that there is need to preserve the suit property until the hearing and determination of this suit.

I find merit in this application and I grant the orders sought namely:

**1. That a temporary injunction do and is hereby issued restraining the defendants by themselves, their servants and/or agents and/or any person acting in their authority from transferring , letting, selling and/or doing any dealings connected to land title Number KWALE/UKUNDA/4512 until the hearing and determination of this suit.**

**2. Cost of this application be in the cause.**

Orders accordingly

**L. KOMINGOI**

**JUDGE**

11/4/2017

ruling dated and delivered in open court on the 11<sup>th</sup> April 2017 in the presence of the plaintiff/applicant and the court assistant Koitamet

**L. KOMINGOI**

**JUDGE**

**11/4/2017**