



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MOMBASA**

**LAND CASE NO 408 OF 2016**

**ANGELA AKINYI AMBITHO.....PLAINTIFF/APPLICANT**

**VERSUS**

**UHURU SULEIMAN KOI.....DEFENDANT/RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 20<sup>th</sup> December 2016. It is brought under section 1, 3A & 63(e) of the Civil Procedure Act order 40 and 51 of the Civil Procedure Rules and all enabling provisions of the Law.

It seeks orders that;

a) Spent

b) Spent

c) Pending the hearing and determination of the suit herein the Honourable Court be pleased to issue an order of injunction barring the Defendant either by himself, her assigns, servants, agents, and/or any other persons acting under her directions from either entering, selling, offering for sale, transferring, leasing and/or in any other way interfering with the plaintiff's peaceful possession and occupation of all that land known as Parcel Number Mombasa/Mwembelegeza/759.

d) Costs be borne by the defendant.

2. The grounds are set out on the face of the application. The main one being the defendant is the widow and legal representative of the Estate of the late Elijah Kahindi Yaa.

That the deceased was the original allottee of the suit property from the government of Kenya vide a letter of allotment dated 1<sup>st</sup> December 1998 and that vide an agreement dated 30<sup>th</sup> October 2010 the deceased sold the suit property to the plaintiff with the knowledge of the defendant.

3. The application is supported by the affidavit of Angela Akinyi Ambitho, the plaintiff herein sworn on the 20<sup>th</sup> December 2016.

4. The application is opposed. There is a replying affidavit sworn by Uhuru Suleiman Koi, the defendant herein sworn on the 24<sup>th</sup> of April 2017.

5. On the 25<sup>th</sup> of April 2017 it was agreed by both parties that the application be disposed of by way of written submissions. Both parties then filed written submissions.

6. I have considered the pleadings, the application, submissions of counsel and the authorities cited. In written submissions counsel substantiated their client's respective positions in their respective affidavits. The issue for determination is whether the Application has satisfied the conditions for grant of temporary injunctions.

7. It is now 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 –versus- Cassman Brown & Co. Limited (1973) EA 358*.

First the applicant must show a prima facie case with a probability of success. Secondly, that an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.

Thirdly, if the court is in doubt, it should act on a balance of convenience.

8. It is the Plaintiff/Applicant's case that she purchased the suit property from one Elijah Kahindi Yaa who was the original allottee. She annexed the sale agreement for the sale of the suit property to the Applicant of the deceased. She told the court that she is in possession.

The Respondent/Defendant on the other hand does not deny that the original allottee is her late husband Elijah Kahindi Yaa. She denies that the suit property was sold to the plaintiff. She also denies that she is about to dispose of the suit property to a third party.

The issue as to whether the plaintiff purchased the suit property will be determined at the trial.

9. I find that the applicant has demonstrated that she has a prima facie case with a probability of success.

I am guided by the case of *Mrao Limited –versus- First American Bank of Kenya And 2 others* where the court of Appeal held that;

**“... A prima facie case in a civil application includes but not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later....”**

I also find that she is likely to suffer irreparably if these orders are not granted. The Plaintiff's/Applicant's fears that the Defendant may transfer the suit property to a third party are real.

I find that there is need to preserve the suit property hence the need to maintain the status quo.

10. I find merit in this application and I grant the orders sought namely;

1. That an order of temporary injunction do and is hereby issued barring the Defendant/Respondent either by herself, her assigns, servants, agents, and/or other persons acting under her directions from either entering, selling, offering for sale, transferring, leasing, and/or in any other way interfering with the Plaintiff's/Applicant's peaceful possession and occupation of all that parcel of land known as Parcel Number Mombasa/Mwembelegeza/759 pending the hearing and determination of this suit.

2. That costs of the application do abide the outcome of the main suit.

**It is so ordered.**

**Dated, signed and delivered at Mombasa on the 12<sup>th</sup> day of October 2017.**

**L. KOMINGOI**

**JUDGE**

**12/10/2017**