



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ELC. NO. 65 OF 2011**

**MAHSEN AHMED SALIM ..... PLAINTIFFS**

**- VERSUS -**

**LUKAS BRUNO MWATSUMA ..... DEFENDANT**

**RULING**

[1] The plaintiff in this case filed his suit on 23rd March, 2011 and prayed for an order of specific performance to compel the defendant to execute the transfer documents in respect of sub plots no. 5,7 and 8 of subdivision number ( original number 46/2/) Section III Mainland North in favour of the plaintiff upon payment of the balance of purchase price as per sale agreement dated 30th April 2009. The defendant filed a reply to the defence on 19th May, 2011 and basically denied the averments of the plaintiff as contained in his plaint. Thereafter by a notice of motion dated 28th November, 2011 the defendant filed his motion claiming that a temporary injunction do issue restraining the plaintiff and or his servants or agents in any other way interfering with the defendants Parcel of land known as CR. 45379 subdivision No. 4138 pending the determination of the suit by the plaintiff.

[2] This application is opposed by the plaintiff /respondent. The basis of the plaintiff/respondent opposition is that the application is misconceived, is an abuse of the court process and does not lie in law for the simple reason that an interlocutory injunction can only issue where there is a permanent injunction sought as the final relief by the applicant.

[3] On perusal of the defence filed herein, it is apparent that there is no counterclaim praying for any injunctive orders against the plaintiff/ respondent. Injunctive relief cannot be granted where there is no relief in the nature of a permanent injunction prayed for. Interlocutory relief cannot be granted *in vacuo*. This application is dismissed as being incompetent with costs to the respondent.

**Dated and delivered in open court at Mombasa this 27th day of March, 2014.**

**S. MUKUNYA**

**JUDGE**

**27.3.2014**

In the presence of:

Mr. Mutubia Advocate for the plaintiff

Mr. Mugalla Advocate for the defendant/applicant

Southern Credit Banking Corp. Ltd -vs- Charles Wachira Ngundo Nrb. HCCC. 170 OF 2000.