



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO. 180 OF 2011**

**MONIKA KIOKO.....PLAINTIFF/ RESPONDENT**

**=VERSUS=**

**RENSON MUNGA.....DEFENDANT/ APPLICANT**

**R U L I N G**

**Introduction**

1. What is before me is the Defendant's Application dated 22<sup>nd</sup> August, 2013 filed pursuant to the provisions of Order 40 of the Civil Procedure Rules and seeking for the following Reliefs;-

**(a) That this Honourable Court be pleased to issue Temporary Injunctive Orders restraining the Plaintiff/Respondent and/or her agents and/or her servants and/or her relatives and/or whoever acting on her behalf from constructing and/or erecting structures and/or disposing off the suit premises, being three plots on a parcel of land described as sub-division No.334/III/MN situate at Maweni within Mtwapa or doing anything detrimental to the Defendant's/Applicant's interest or rights over the suit premises herein, pending the hearing and determination of this suit.**

**(b) THAT this Honourable Court be pleased to issue Temporary Injunctive Orders restraining the Plaintiff/Respondent and/or her agents and/or her servants and/or her relatives and/or whoever acting on her behalf from preventing the Defendant/Applicant to access and/or occupying and/or living and/or staying on the suit premises and in particular the 3 bed roomed permanent house standing on a portion of land measuring 50ft by 80ft on Plot NO.334/III/MN situate at Maweni within Mtwapa Township or doing anything detrimental to the Defendant's/Applicant's interest or rights over the suit premises herein, pending the hearing and determination of this Application.**

**(c) THAT costs of this application be provided for.**

**The Defendant's/ Applicant's case:**

2. The Defendant's/Applicant's deposition is that he bought three plots on Plot Number 334/111/MN jointly with the Plaintiff at a sum of Kshs.350,000 on 20<sup>th</sup> February, 2008 having bought another portion measuring 50ft by 80ft for Kshs.150,000 in the same parcel of land on 20<sup>th</sup> November,

2006; that is the same portion of land that the Plaintiff is now claiming; that the Plaintiff/Respondent has restricted him from going into the house situated on the suit property and that the Plaintiff is now developing the plot with the intention of disposing it off.

### **The Plaintiff's/Respondent's case**

3. The Plaintiff/Respondent deposed that as at the time of buying the suit property, the Defendant/Applicant was then residing thereon and he made her understand that the seller had a good title to pass to her.
4. However, it was deposed, it became apparent that Plot No.334/III/MN was on 12<sup>th</sup> January, 1970 surrendered to the Government and that the person who sold the suit plots to her was a mere squatter and that the plots actually fell on plot number MN/III/524 which is a resultant plot arising from the amalgamation of Plot 334 and 324.
5. It is the Plaintiff's deposition that the two plots were confiscated from her by a group calling itself Mtwapa Maweni Self Help Group and she was left with only one plot where she has put up her three bedroomed house which stand on plot number MN/III/524.

### **Submissions**

6. The Defendant's/Applicant's advocate submitted that he has a prima facie case with chances of success having purchased plots on subdivision number 334/III/MN and that the purpose of an injunction is to protect the subject matter before the suit is heard and determined.
7. The Plaintiff's advocate did not file his submissions.

### **Analysis and findings**

8. According to the Plaintiff, the Plaintiff acquired three plots being portions of sub-division 334/III/MN and erected a three bedroomed house valued at Ksh.3,000,000. The Plaintiff seems to have had an intimate relationship with the Defendant and entrusted him with some money.
9. The Plaintiff's claim is for a declaration that she is the rightful sole owner of three plots at Maweni area from sub-division 334/III/MN and for a permanent injunction restraining the Defendant from interfering with her quite possession.
10. However in the Replying Affidavit, the Plaintiff/Respondent has stated that she has lost the two plots to a group calling itself Maweni Self Group and she has been left with only one plot on which stands the three bedroomed house that she lives in.
11. On the other hand, the Defendant/Applicant stated in his Defence and counter-claim that while cohabiting with the Plaintiff they purchased a plot from one Karisa Kazungu for Ksh.350,000 although they were unable to take possession of the plot due to a dispute with the local inhabitants and that in the year 2011, the Plaintiff denied the Defendant entry into the suit premises.
12. The Defendant/Applicant did admit in the counter-claim that him, together with the Plaintiff, purchased one of the plots from Karisa Kazungu Chengo for Ksh.350,000 but they were prevented from taking possession of the plot by the local inhabitants.
13. It is not clear from the Defence and counter-claim whether the plot that the Plaintiff has claimed that she build a three bedroomed house was jointly purchased, considering that she has stated that she lost the other plots .
14. Considering that the Defendant/Applicant has not shown, prima facie that him, together with the Plaintiff, jointly constructed the three bedroomed house that is being occupied by the Plaintiff, I am unable at this stage, to order for the eviction of the Plaintiff from the said plot/house as prayed by the Defendant in his Application. The Defendant has not produced any evidence to show that other than the three bedroomed house on a portion of the suit property, it is the Plaintiff who is putting up buildings in other two plots.
15. The Plaintiff has been staying in the said home since 2011/12 as admitted in the Defence and counter-claim. The Defendant will therefore not suffer any irreparable harm if the injunctive order is not granted. The balance of convenience also tilts in favour of the Plaintiff/Respondent.
16. For the reasons I have given above, I dismiss the Defendant's Application dated 22<sup>nd</sup> August, 2013 with costs.

Dated and delivered in Malindi this 31<sup>st</sup> Day of **July, 2014**

**O. A. Angote**

**Judge**