



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MALINDI**  
**HCCC NO.114 OF 2012**

**SALLY NAMSINDA MUNGATANA.....PLAINTIFF**

**=VERSUS=**

- 1. GOEFFREY TENAI t/a IGATE INVESTMENT**
- 2. KAAB INVESTMENTS LIMITED**
- 3. REGISTRAR OF TITLES (MSA).....DEFENDANTS**

**R U L I N G**

1. Before me is the Plaintiff's Application dated 13<sup>th</sup> July 2012 seeking for the following orders;
  - (i) **THAT there be a temporary injunction restraining the defendants by themselves, their agents, servants, legal representatives, or any one claiming interest through them from constructing, trespassing, entering, remaining, selling, alienating, transferring, and/or dealing with the suit property being land portion number 13408 CR 50566 in any manner whatsoever pending the hearing and determination of this Application inter partes.**
  - (ii) **THAT upon the inter parte hearing, an injunction be issued in terms of prayer (i) above pending the hearing and determination of this suit.**
  - (iii) **THAT costs to this Application be in the cause.**
2. The Application is supported by the Affidavit of the Plaintiff who has deponed that she has been in possession of land known as Plot number 13408 measuring 4.371 hectares; that in the year 2006, she applied to the Ministry of Lands for the allotment of the plot and was issued with a letter of allotment.
3. It is the Applicant's further deposition that upon payment of the requisite fees she was issued with a deed plan number 316692 in respect to the suit property and while waiting for the issuance of a grant, she discovered that the property had been mysteriously registered in the name of the 1<sup>st</sup> Defendant. The said grant was transferred subsequently to the 2<sup>nd</sup> Defendant.

4. The Applicant finally deponed that she is in custody of the original deed plan and cannot understand how the grant was issued to the 1<sup>st</sup> Defendant.
5. The 1<sup>st</sup> Defendant filed his Replying Affidavit on 20<sup>th</sup> May 2013 and deponed that he purchased the suit property from one PATRICK SULEIMAN FONDO which had already been surveyed. He carried out sub-division for the portion he had bought whereupon a letter of offer and grant number CR 50566 was issued to him.
6. The 1<sup>st</sup> Defendant deponed that he later transferred the suit portion number 13408 to the 2<sup>nd</sup> Defendant; that the Plaintiff is not in occupation of the land and that the Plaintiff recourse is to file a suit against the Government for compensation.
7. I have perused the copy of the deed plan that the Plaintiff purports to be holding and the deed plan annexed on the 1<sup>st</sup> Defendant's grant. The two are the same in all respect.
8. It is trite law that a property cannot have two deed plans. One of them must be a forgery and the court cannot ascertain at this stage the forged deed plan. Evidence will have to be called by all the parties to ascertain the person who was issued with deed plan number 316692 for portion number 13408 by the Director of Surveys.
9. In the meantime, justice will better be served if the suit property is preserved pending the hearing of the suit. The fact that the Plaintiff is holding the original deed plan number 316692 is evidence enough that she has a prima facie case with chances of success. The 1<sup>st</sup> Defendant will have to show at the hearing how he came into possession of the same deed plan.
10. If the injunctive orders are not granted, the 2<sup>nd</sup> Defendant is likely to deal with the land in a manner that will change the use of the land or may transfer this property to unsuspecting third parties thus putting it beyond the reach of the Plaintiff. That shall definitely occasion the Plaintiff irreparable damage.
11. In the circumstances, I allow the Application dated 13<sup>th</sup> July 2012 as prayed.

**Dated and Delivered in Malindi this 4<sup>th</sup> day of October, 2013**

**O. A. Angote**

**Judge**