



THE TRUSTEES OF JOM FOUNDATION .....1<sup>ST</sup> PLAINTIFF  
JOSEPH ODONGO MUMMA .....2<sup>ND</sup> PLAINTIFF  
AUGUSTINE MUMMA ODONGO .....3<sup>RD</sup> PLAINTIFF  
CHARLES OKELLO ODIWUOR .....4<sup>TH</sup> PLAINTIFF  
CHARLES ODONGO OPIYO .....5<sup>TH</sup> PLAINTIFF

**VERSUS**

CHRISANTUS KOWINO .....1<sup>ST</sup> DEFENDANT  
HIEKE PRONL .....2<sup>ND</sup> DEFENDANT  
GODFREY OCHEING ONYANGO .....3<sup>RD</sup> DEFENDANT

**RULING**

The plaintiffs Notice of Motion dated 23<sup>rd</sup> September 2011 is brought under Order 37 Rules 2, 7, 8, 12, 17 and 20, Section 1A, 1B, 3A, 63E of the C. P. A. and all the enabling provisions of the law. The same is praying for the following orders:-

1. Service be dispensed with and the application be heard ex-parte in the 1<sup>st</sup> instance.
2. This application be certified as urgent and be heard on priority basis.
3. Pending hearing and determination of this application inter parties interim injunction be issued against the Defendants, their agents, their representatives restraining them from converting, alienating, transferring or divesting the Trust Property i.e. Sigoti Complex Primary School, St Augustine Sigoti Complex College, Trust parcel of land title number Kisumu / East Koguta/ 2025 form the Board of Trustees and / or the Trust Management without the consent of the Trustees or otherwise in any manner.
4. Permanent injunction against the Defendants, their agents, their representatives restraining them from converting, alienating, transferring or divesting the Trust Property, i.e. Sigoti Complex Primary School, St. Augustine Sigoti Complex College, Trust parcel of land title number Kisumu /East Koguta / 20125 form the Board of Trustees and/or the Trust Management without the consent of the Trustees / Plaintiffs or otherwise in any manner.
5. The O.C.S. Pap-Onditi Police Station to assist in execution of the Order/Eviction of the defendants from interfering with the Trust Property, converting, alienating, transferring or divesting the Trust Property i.e. Sigoti Complex Primary School, St. Augustine Sigoti Complex College, Trust Parcel of land title number Kisumu / East Koguta / 2025 form the Board of Trustees

**and / or the Trust Management without the consent of the Trustees / Plaintiffs or otherwise in any manner.**

## **6. Costs of this application be provided for.**

It is supported by various affidavits sworn by the plaintiffs. The gist of the said application is to restrain the defendants from interfering with the running of Sigoti Complex Primary School, St Augustine Sigoti Complex College and land parcel number Kisumu / East Koguta / 2025. The plaintiffs established a trust known as Jom Foundation which was registered as a document on 11<sup>th</sup> August 2005. It is the applicant case that the defendant had a meeting on 15<sup>th</sup> September 2011 where they resolved to interfere with the smooth running of the institutions. Infact there was a resolution that they resolved to wrestle the trust from them. As far as they were concern the defendants had no dealings at all with the 1<sup>st</sup> plaintiff. That all the developments they have put up has been solely at the cost of the plaintiffs.

On the contrary the defendant has greatly objected to the plaintiff assertion. They have sworn various affidavits showing that indeed all the development done allegedly by the plaintiffs have been done via defendants' sponsorship.

According to the 2<sup>nd</sup> defendant a sponsor by the name **Stichting Bolsward Sigoti** ( SBS) foundation has pumped in about Kshs. 18 million to the project. It is further their case that the Mumma family (the plaintiffs) cannot account for over Kshs. 3 million todate.

The court at this juncture is not called to go into the merits and the demerits of the substantial suit. The orders asked by the plaintiffs are interlocutory in nature. The injunctive reliefs shall only be granted if the applicant shall satisfy the grounds well settled in the **Giella =vs= Cassman Brown** case and in particular that it has established a prima facie case with a possibility of success, that if the orders are not granted the applicant shall suffer irreparable harm and loss and if in doubt the court shall grant the same if the balance of convenience tilts in favour of the applicant.

There is no doubt that the plaintiffs are the trustee of the Jom Foundation. They have since registered a trust which they have used to acquire several properties. This includes land parcel number Kisumu East / Koguta / 2025. The question which I am unable to ascertain from the pleadings is how they managed to buy the land and develop the learning institutions. This has not come out very well in the affidavits.

On the contrary the defendants have been able to establish that they channel funds from Netherlands for purposes of developing orphan institutions to cater for orphaned boys. They have exhibited several documents to that effect.

In my mind there is more than meet the eye in this suit. There are issues touching on embezzlement, mistrust and all the attendant consequences emanating from greed and corruption. These are issues that can only come out during a full trial.

For now I shall disallow the appellants' application. They have not shown how they shall suffer should the application not be granted. I further agree with the defence that they have come under a wrong provisions of the law. Order 37 of the Civil Procedure Rules Chapter 21 laws of Kenya do not deal with injunctive reliefs. It is now a trite law that parties should come via the proper sections of the law where they are provided and that the inherent powers of the court are only reserved under special circumstances.

I shall therefore dismiss the plaintiffs application dated 23<sup>rd</sup> September 2011 with costs to the defendants. I shall further order that pending the hearing and determination of this suit the plaintiffs, their servants and or agents should not sale, charge, subdivide or otherwise part with said parcel number Kisumu / East Koguta / 2025.

Orders accordingly.

**Dated, signed and delivered at Kisumu this 29th day of February 2012**

**H. K. CHEMITEI**  
**JUDGE**

**In the presence of:**

..... **Advocate for Applicant**

..... **Advocate for Respondents**

*HKC/aao*