



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENTAL & LAND CASE 606 OF 2010

C'EST BON SUPERIOR SCHOOLPLAINTIFF

VERSUS
JOSEPH ALEX GICHUH
NDIRANGU KARANJA

COMMISSIONER OF LAND..... DEFENDANT

RULING

The 1st Defendant/applicant hereinafter referred as the applicant has filed a Notice of Motion dated 14th February 2012 under section 3A of the Civil Procedure Act and under Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law, seeking the following orders.

1. That the Court be pleased to order that the transfer of shares form dated 6th February 2009 be submitted to the documents examiner at C.I. D headquarters for examination of the signature of MICHEAL NGARI GICHUHI.
2. That the Court be pleased to order the said MICHEAL NAGARI GICHUHI to avail himself at the C.I.D headquarters for the purpose of furnishing his specimen signatures.
3. That the costs of this application be provided for.

The application is based on the following grounds.

- a) That 1st defendant herein filed a notice of preliminary objection and a list of documents in support of the preliminary objection which included a transfer of shares form signed by Micheal Ngari Gichuhi.
- b) The said documents dated 6th February 2009 form the basis of the preliminary objection.
- c) The said Michael Ngari Gichuhi has now filed an affidavit in which he alleges that the signature on the said documents is not his and that it is a forgery.
- d) That for the Court to be able to determine whether the signature is a forgery or not it is important that the said documents be examined by a documents examiner.

e) That for the documents to be examined the said Micheall Ngari Gichuhi should furnish the documents examiner with his specimen signatures.

The applicant Joseph Alex Gichuhi in his affidavit dated 14th February 2012 states as follows; that he had instructed his Advocate herein to file a preliminary objection in this matter and in support of the said preliminary objection they filed in list of documents; that in response to the preliminary objection and the list of documents in support the plaintiff advocates filed 3 affidavits sworn by Felista Mwihaki, Juliet Njeri and Micheal Ngari; that in his affidavit Michael Ngari; that in paragraph 9 Michael Ngari states that he has seen a document indicating that he transferred his shares to the 1st defendant and further goes on to state that he did not sign the said documents and that it is a forgery; that the documents referred to is a transfer of shares dated 6th February 2009 whereby the said Micheal Ngari Gichuhi transferred to him his shares in C'est Bon Superior School Ltd; that the documents was signed by Micheal Ngari Gichuhi and the signature thereon is genuine and not a forgery; that given that this Court is now being asked to make a determination as to whether the signature on the said document is a forgery or not and given that this Court is not capable of making such a determination without an expert it is in the interest of justice that the Court be furnished with report from the documents examiner in order for the Court to make a determination as to whether the signature is a forgery or not.

Felistus Mwihaki a director of the plaintiff company in his replying affidavit dated 23rd March 2012 states as follows; that she was advised by her advocates on record that the 1st defendant's application is an abuse of the Court process meant only to delay and defeat the hearing of their application stated 8th December 2010; that the orders sought for by the 1st defendant and in particular prayer 2 and 3 are orders that are not provided for or supported by any provisions in the Civil Procedure Act or even in the Evidence Act; that this Honourable Court lacks the jurisdiction to grant such orders that have clearly not been provided for. The Court ought to act in vain by issuing orders it has no powers to enforce; that the correct procedure provided for under the law is where matters deponent to in an affidavit are in doubt or require ascertainment then the deponent of such affidavit should be called for cross examination; that the Court has power to order the attendance of the deponent if such order is sought for and in this case it was not; that the said application is capricious, utterly unreasonable and a delay tactic being used by the 1st defendant to circumvent the due process of the law by having matters that can be determined at a later stage of the hearing of the main suit; that the Court should to dismiss this application with costs to the plaintiff and allow the parties to proceed and file their submissions in respect to the preliminary objection.

I have considered the applications dated the 14/2/12 and I find as follows;

The applicant is asking the Court to make orders to compel one Michael Ngari to avail himself at the CID and also to have a transfer form submitted to the CID. I have considered the submissions made by Counsels on the application and I find as follows; I decline to grant the orders sought for the following reasons; the applicant in seeking to have the said orders granted is seeking to use this Court of do investigations. If the applicant wants to prove the signature was not a forgery then he ought to get the services of a document expert to do that. He does not need the Court's assistance.

Secondly if there is any criminal in nature that the applicant suspects then he should take it up with the relevant authorities. I therefore find no merit in the application and dismiss it with costs to the respondent.

Dated and delivered this 25th Day of April 2012

R. OUGO
JUDGE

In the Presence of:-

..... For the Applicant

..... For the Respondent

..... Court Clerk