



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE 643 OF 2011

GODFREY KARISA

MASHANGA.....PLAINTIFF

V E R S U S

1. EDMUND DURR (Sued as Trustees of NICE VIEW TRUST

FOUNDATION PHYSICAL PLANNING OFFICER KWALE COUNTY.....1ST
DEFENDANT

2. THE LAND REGISTRAR.....2ND
DEFENDANT

3. KWALE LAND REGISTRY3RD
DEFENDANT

RULING

1. The application for injunction dated 16th December 2011 is brought against the background of a suit filed by the Plaintiff in respect to Kwale/Msambweni ‘A’/2291 (*hereinafter the suit property*). The application seeks-

(a) That pending the hearing and determination of this suit the Defendant/Respondent by himself his agents and/or servants be restrained from blocking the access alienating, carrying out developments, evicting the Plaintiff, removing any furniture, installations and equipment or in any other manner interfering with Plaintiff’s quiet enjoyment of the suit premises being KWALE/MSAMBWENI ‘A’/2291.

2. The Plaintiff was previously the registered owner of the suit property. On 17th March 2010 an agreement was executed between the Plaintiff and the 1st Defendant. It is a short agreement and it helps to reproduce it in full-

*“This Agreement is made between:
Dr. Mashanga*

7. Looking at the evidence so far presented by the parties this court does not find that the Plaintiff has established a prima facie case. There is an admission by the Plaintiff that he executed the agreement of 17th March 2010. A plain reading of it is that he was to transfer the suit property for the benefit of the 1st Defendant. How does one assign a different interpretation to Clause 1 of that agreement which reads-

***“On this date, 17th March 2010, Dr. Mashanga transfers his property with Plot Number 2291 to Nice View Trust Foundation (‘The Trust’), for the use and benefit of The Trust.*”**

8. The Plaintiff does not deny signing the transfer forms although he alleges that he was tricked into doing so by the 1st Defendant. There will be opportunity to test this allegation at the main hearing but one is tempted to find that the transfer was consistent with the intention reached between the parties on 17th March 2010.

9. What about the more recent document of 5th December 2011? The “Agreement” in my view is not enforceable in a court of law as the signatures of the parties were not attested to by witnesses as required by Section 3(3) (b) of The Law of Contract. Yet it seems to affirm that the parties had earlier willingly agreed and arranged to pass ownership of the suit property from the Plaintiff to the 1st Defendant.

10. So on strength of the evidence alone this court is not inclined to grant an order of injunction.

11. If the Plaintiff is to be believed then he is asking the Court to endorse and recognize an arrangement which was simulated to cheat donor aid. It takes some courage, does it not, to ask a Court sitting in equity to uphold such an arrangement?

12. The result is that the application of 16th December 2011 is hereby dismissed with costs.

Dated and delivered at Mombasa this 26th day of June, 2012.

**F. TUIYOTT
JUDGE**

Dated and delivered in open court in the presence of:-

Ojode for the Plaintiff

Nyabena for the 1st Defendant

Court clerk - Moriasi

**F. TUIYOTT
JUDGE**