

JOHN ROBERT MCTOUGHPLAINTIFF

VERSUS

WILLIAM ROMAN MCTOUGH.....1ST DEFENDANT
AIRPORT HOUSING CO-OPERATIVE SACCO2ND DEFENDANT
COMMISSIONER FOR OATHS3RD DEFENDANT
REGISTRAR OF TITLES4TH DEFENDANT

R U L I N G

The plaintiff/applicant JOHN ROBERT MCTOUGH is the eldest brother of 3 brothers. He has sued his younger brother WILLIAM ROMAN MCTOUGH as the 1st defendant/respondent, AIRPORT HOUSING CO-OPERATIVE SACCO as the 2nd defendant/respondent, the COMMISSIONER OF LANDS and REGISTRAR OF TITLES as the 3rd and 4th defendants/respondents respectively.

The applicant seeks for injunctive orders against the defendants by themselves; their employees, agents and or workers from seeking, constructing, dealing in, dispossessing off and in any way whatsoever alienating the suit property No. EAST KISUMU/DAGO/234 pending hearing and determination of this suit.

The two brothers from the pleadings have had a long history of misunderstanding over properties and business ventures jointly owned with yet another brother James Michael Mctough not featuring in this altercation.

The applicant claims forgoing of his signature and fraud in the sale by the 1st defendant in the sale of the subject matter to the 2nd defendant. The 1st defendant on his part alleges that the property was transferred to him by his brother the applicant with a consideration of Kshs.500,000/= and where the applicant signed a note and a power of attorney in his favour.

The 2nd defendant on its part states that it is a buyer for value unaware of the feud between the brothers. There was no response from the 3rd & 4th defendants. It appears to me that the property subject matter is prime, and sold to the 2nd defendant for Kshs.15,300,000/=. The 2nd defendant/respondent is a member sacco organization who may indeed have been unaware of the history between the plaintiff/applicant and the 2nd defendant/respondent.

The issue however at this juncture and based on the current application before me dated 19th March,

2012 is whether the plaintiff has met the three conditions as set out in the case of GIELLA VRS CASSMAN BROWN & COMPANY LIMITED [1973] E.A. 358 for issuance of an injunction.

The title in question is in the name of three persons. Although there is a power of attorney there is an allegation of fraud. There is also an allegation of fraud in the respondent's bid to obtain a copy of the title which the plaintiff/applicant alleges to have in his possession. Although the loss may be quantifiable in terms of damages this may not entirely be true where land is in issue and where substantial figures are involved. In my view in the circumstances of this case this matter will come out clearer at full hearing. There are glaring gaps in the affidavit evidence so far adduced in which case I will decide this matter on a balance of convenience which in my view tilts in favour of the plaintiff/applicant.

Costs will abide the outcome of the case.

DATED AND DELIVERED THIS 20TH DAY OF JULY 2012

ALI-ARONI
J U D G E

In the presence of:

-counsel for plaintiff
-counsel for 1st defendant
-counsel for 2nd defendant
-counsel for 3rd defendant