



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL SUIT NO. 99 OF 2010

ALBERT.....PLAINTIFF

VERSUS

JOEL NYASEME.....1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

RULING

The 1st defendant Preliminary Objection is based on the following grounds namely:-

- (I) (a) Sections 7 of the Limitation of Auction Act Chapter 22.
(b) Section 3 (1) of the Public Authority Limitation Act Chapter 39 Laws of Kenya

(II) (a) The 1st defendant being the 1st registered owner of the suit parcel of this title indefeasible and cannot be challenged under the provision of Section 143 of the R. L. A. Chapter 300 laws of Kenya.

I have perused the plaintiff's plaint dated 9th June 2011 which prays among others for a permanent order of injunction to restrain the defendants from trespassing on land parcel number **KISUMU / KOGONY / 2168**. Several issues have been raised in the said plaint and the fundamental prayer therein is an alleged fraud by the defendants.

I have further looked at the 1st defendant's statement of defence. Apart from denying the issues raised in the plaintiff's plaint it has further raised fundamental legal grounds which are summarized in the preliminary objection herein.

Preliminary point of law as clearly understand must be such that when the same is applied it must dispose off the issues in the suit without looking further into any other pending issues. There must be no other evidence so required to dispose of the suit. It's summary in nature.

From the case at hand the same cannot be decided by this summary procedure. The allegations of fraud must be determined by adducing evidence. Whether or not the 1st defendant's title is indefeasible is a question of evidence. The process in which he found his name in the register is indeed relevant. I have also perused the annexures to the pending plaintiff's application dated 9th June 2010 and as much as the same is pending, they are pleadings in court records which cannot be avoided.

For the following reasons, therefore I disallow the 1st defendant preliminary objection. I am further alive to Section 159 (2) (d) of the current constitution. This matter ought to proceed to its logical conclusion whatever the outcome.

Costs to the respondent/plaintiff.

Dated, signed and delivered this 2nd day of November 2011.

**H. K. CHEMITEI
JUDGE**

HKC/aao