

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 83 of 2009

CO-OPERATIVE INSURANCE OF KENYA LTD. PLAINTIFF

VERSUS

CALVINS ODHIAMBO AYOMA 1ST DEFENDANT

PAUL ODHIAMBO 2ND DEFENDANT

DANIEL OWINO ONGOYA 3RD DEFENDANT

THE BOARD OF GOVERNORS,

SILVER BRIDGE SCHOOL 4TH DEFENDANT

R U L I N G

Application dated 4/2/09 brought under **Order 39 Rule 1 (b)** and **9 Civil Procedure Code, Section 3 and 3A and 63 (e)** of **Civil Procedure Act** seeks orders for temporary injunction to issue restraining the defendants from offering for sale transferring, disposing off of assets and/or school known as Silver Bridge School pending the hearing and determination of this suit and that a temporary injunction do issue restraining the defendants by themselves or their agents or any person whatsoever from withdrawing and transferring all the money held in the bank account No.01136096031100 at Co-operative Bank, Githurai Branch, Nairobi on the grounds listed in the application and the affidavit of Mary Wanga annexed to the application which shows that on or about July 2008, the plaintiff was approached by a person called William Otieno Ayoma seeking a life insurance cover which was issued as Policy No.400/000300 for a period of 5 years from 1/8/2008 with a maturity date of 1/8/2013.

Beneficiary was named and described as brother to the insured. Then on/or about 20/11/2008, the first defendant appeared in the plaintiff's offices and presented himself as a beneficiary to the policy and said the insured was dead already and he was the beneficiary entitled. Then Kshs.100,000/= funeral expenses benefit and Kshs.6,575,698/= was released by the plaintiff and paid to the first defendant on 29/11/2008 by cheque No.7301 which cheque matured within hours as it was an in-house cheque.

First defendant then withdrew Kshs.500,000/= and on 30/11/2008 transferred Kshs.6,000,000/= vide bankers' cheque in the name of Silver Bridge School. It is submitted that the application Life Insurance and the policy document issued in respect thereto was calculated on concealed material facts, fraudulently acquired and fictitious documents, misrepresentation and breach of the doctrine of "*uberima fidei*" so as to render the same null and void and not payable.

There are no other assets belonging to the defendants. There is real possibility that defendants shall jointly and severally conspire to withdraw the entire amount from the bank and dispose off the Silver Bridge School assets to third parties. The application is supported by affidavit of Mary Wanga who is an employee of the plaintiff who confirms that there was fraud.

Upon perusing the material placed before the court, I am convinced that there is fraudulent dealings of high class in this suit by the defendants. It was a scheme to collect money from the bank and the perpetrators arranged of death after taking the life insurance policy naming beneficiary after a short period went to collect the money from the plaintiff pretending the policy holder was dead. The collection

of money banked must have been facilitated by an employee of the defendant.

In the circumstances, I am of the view that the applicant's side of the story is true. I therefore allow the application and grant orders as prayed under the terms of prayer 2, 3, 4 and 5. The costs of this application shall be paid to the plaintiff.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 31st day of July, 2009.

JOYCE N. KHAMINWA

JUDGE