



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 337 of 2007

BASHIR AHMED AWAN.....1ST PLAINTIFF

SHAKEEL AHMED AWAN.....2ND PLAINTIFF

IMRAN SOHAIL AWAN.....3RD PLAINTIFF

VERSUS

ASAD ANWAR.....DEFENDANT

REASONS FOR RULING

On the 14th August 2007, this court heard arguments in respect of a Chamber Summons dated 6th June, 2007 in which the Plaintiffs sought orders against the Defendant as follows: -

- 1.) That this application be certified urgent and the same be heard *ex-parte* in the first instance;
- 2.) That the Defendant do furnish security in the sum of U.S.\$343,000.00 or its equivalent in Kenya Shillings within such time as may be fixed by this court to produce and place at the disposal of this court when required to do so document of title to Land Reference Number 196/33 (Original Number 196/15/14) (I.R.9095), Karen, Nairobi or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him herein, or do appear and show cause why he cannot furnish the said security;
- 3.) That the whole of Land Reference Number 196/33 (Original Number 196/15/14) (I.R. 9095) Karen, Nairobi be attached until such time that the Defendant shall furnish the security sought herein or shall show cause why he should not furnish security or until further orders of the court;
- 4.) That the costs of this application be provided for.

The hearing date was taken as a matter of urgency, the matter having been certified as urgent. Having heard and considered the application, the court ordered the Defendant to furnish security in the sum of U.S. \$343,000 for satisfaction of the decree that may be entered against him within 60 days from the date of the order. In the interim period the court issued a restriction order restraining any transaction including registration of any instrument, regarding Land Reference 196/33 (Original Number 196/15/14) I.R. 9095 KAREN pending the furnishing of the security.

I now give the reasons underlying the order.

In the affidavit sworn by the 2nd Plaintiff on 8th June 2007 in support of the Chamber Summons dated 6th June 2007, the 2nd Plaintiff has annexed two agreements in which the Defendant has acknowledged being indebted to the Plaintiffs in the sum of U.S. \$450,000. Both agreements were duly executed by the parties before an advocate. In the second agreement, entitled supplementary agreement, the amount owed by the Defendant was reduced to U.S. \$342,000.

In his replying affidavit sworn on 13th August 2007, the Defendant admits having executed the two agreements, but purports to have rescinded the agreements, because, He allegedly signed the agreement without the benefit of independent legal advice. Defendant also claims that there was undue influence exerted upon him due to the relationship between him and Sonal Segpal an advocate who purported to act for him but who was in actual fact protecting the interests of the Plaintiffs. The Defendant denied owing the amount claimed and maintained that the Plaintiffs invested the money in companies where the Plaintiffs and Defendant are shareholders. The Defendant maintained that LR NO.196/33 is his personal property which the Plaintiffs are trying to grab from him. He maintained that He has already sold and transferred the said property to a *bona fide* purchaser for value without notice.

It is evident from the above that there are two agreements duly executed by the Plaintiffs and the Defendant before an advocate. In both agreements the Defendant acknowledged the debt to the Plaintiffs. The Defendant having admitted executing the two agreements, the evidential burden rests upon him to establish that the agreements are vitiated by undue influence. That will have to be done at the hearing of the suit. For now the evidence available shows that the Plaintiffs have a reasonable cause of action against the Defendant.

The Defendant has further admitted that He is not only in the process of disposing of his land LR 196/33 but purports to have actually disposed of the land. In support of this, He has annexed a copy of a transfer dated 9th August 2007 which although duly executed has not been registered at the lands office nor is there any evidence of stamp duty having been paid. The implication is that if at all there is such a transaction then the same is in the initial stages and has not gone through.

The timing of this transaction, taken together with the affidavit evidence of Christopher Bruce Geeves sworn on 25th July 2007, which avers that as at 20th July the property was still being advertised for sale, confirms the Plaintiff's fears, that the Defendant is intending to dispose of his property in a bid to obstruct or delay the possible execution of the decree that may be passed against him.

For the above reasons there is merit in the Plaintiffs' demand for the Defendant to furnish security. Further, given that the Defendant is in the process of disposing of his only known asset, and it was only fair and just that the same be attached pending the furnishing of the required security.

Under these circumstances it is appropriate that a further order be made for the Plaintiff to pay the costs of the application.

Orders accordingly.

Dated, signed and delivered this 18th day of October 2007.

H. M. OKWENGU

JUDGE