

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 994 of 2004

ANNE NYANCHAMA OMBUNA
PLAINTIFF

-versus-

WEDUBE ESTATES LIMITED 1st
DEFENDANT

PETER L ONALO t/a ONALO & CO ADVOCATES 2ND
DEFENDANT

RULING

Before me is an application brought under a certificate of urgency by way of Chamber Summons dated the 22nd September 2004 in which the Plaintiff/Applicant seeks, *inter alia*, a mandatory injunction requiring the First and Second Defendants/Respondents forthwith to release to the Applicant the Title Deed relating to Title Number Nairobi/Block 110/593, Nairobi. The application is founded on the three grounds set out therein and supported by the affidavit of the Applicant made on the 22 September 2004.

Though no grounds of opposition to the application have been filed, the Respondents nonetheless do so relying on the affidavits of Peter Onalo, the Second Respondent, and Bernard Muiruri respectively both made on the 30th September 2004.

It is not in dispute that the Applicant's husband, with whom the Applicant owns the said property in absolute proprietorship, borrowed moneys from the First Respondent but whereas the Applicant contends that the said Title Deed was duly deposited with the Respondents as security for the said advances without her consent, the Respondents deny being in possession of the said title document, stating that the loan was made upon the irrevocable professional undertaking of Ashford Koome Mbogo, Esq., Advocate for the Applicant's husband, to repay the moneys in question. Such undertaking is now the subject of an Originating Summons dated and filed on 2nd July 2004 in HCCC No. 717 of 2004 (OS) in which the Second Respondent seeks to enforce the undertaking aforesaid.

I have considered the application in conjunction with all three affidavits aforesaid as well as the respective submissions of learned counsel. In particular, I have noted that at paragraph 9 of the Applicant's affidavit, she depones "that I carried out investigations with the advocates of the said Dickson Omari Rayori, one Koome Mbogo & Co. Advocates and I established from the said Advocates that he had given the said deed to the Defendants for security for some money which the Defendants advanced to him." I have taken further note that the Applicant relies also on paragraph 7 of the Replying Affidavit of the said Ashford Koome Mbogo made and filed on the 15th July 2004 in opposition to the said Originating Summons in which Mr. Mbogo states "*that I am informed by Dickson Omari Omari Rayori (to whom the subject money was advanced) which information I verily believe that the amount is secured by his own original title number Nairobi Block 110/593 and signed transfer*".

The foregoing notwithstanding, the Applicant has not only failed to state specifically how her said investigations were undertaken, and the grounds and reasons for her believing the information given to her by Mr. Mbogo, but she has also failed to file an affidavit by Mr. Mbogo in support of her application in which Mr. Mbogo would have given his grounds and reasons for believing the information given to him by the Applicant's husband. In the absence of such grounds and reasons, the court is not in a position

properly to evaluate the strength of the respective foundations of the Applicant's and Mr. Mbogo respective beliefs.

In the result, I am not persuaded, even on the balance of convenience, that the Applicant has discharged the requirements for the granting of the orders sought. Accordingly, the Chamber Summons application dated the 22nd September 2004 is hereby dismissed with costs to the Defendants/Respondents and it is so ordered.

Dated and delivered at Nairobi this Eighteenth day of October 2004.

P. Kihara Kariuki

Ag Kariuki