



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO.2440 OF 1999**

**CHRISPHINE MAINA GATURU ..... PLAINTIFF**

**VERSUS**

**MUYA MACHARIA ..... DEFENDANT**

**RULING**

This is an application for summary judgment on the grounds that the defence discloses no reasonable defence that it is a sham and intended to delay the Plaintiff's claim.

The Plaintiff claims to be the registered owner of the suit land. He has annexed a copy of the title deed issued to him pursuant to the Registered Land Act, Cap. 300. Section 28 of that Act protects his rights as a proprietor, and cannot be defeated except as provided in that Act. The Defendant, on the other hand, claims that the Plaintiff has obtained title to the suit land by fraud. He says he purchased the same from the original owner prior to the Plaintiff's purchase of the suit land from the same vendor. He has annexed a copy of the agreement for sale, and a copy of the Land Control Board application. He claims to be in possession of the vendor's title deed, without which, he says, the Plaintiff could not have possibly registered himself as the owner, except by fraud.

That, in my view, raises a serious triable issue. There is allegation of fraud, which requires proper investigation and that can only be done by way of evidence at the trial.

In the circumstances, I find that this is not a proper case for summary disposal, and that both parties ought to have the dispute resolved on merit following a full trial. Accordingly, I dismiss the application for summary judgment with costs to the Defendant.

***ALNASHIR VISRAM***

***COMMISSIONER OF ASSIZE***

**25.9.2000**

**29.5.2000**

**Coram: Visram CA**

**Judy Court clerk**

**Mariaria for Defendant/Respondent**

**Applicant present in person**

**Court: Ruling read**

***ALNASHIR VISRAM***

***COMMISSIONER OF ASSIZE***

25.9.200