



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL CASE NO.342 OF 2005

JOHN BRUNDO

OLOO.....PLAINITFF

VS.

THE REGISTERED TRUSTEE TRINITY

FELLOWSHIP.....DEFENDANT

RULING

1. The plaintiff herein – **JOHN BRUNDO OLOO** – filed this suit here against the defendant – **THE REGISTERED TRUSTEES, TRINITY FELLOWSHIP** – on 29/11/2001 claiming, inter alia, that Land parcel **No.9341/234 IR No.47 & 4** was first allocated to him and he rented it out to defendant at 750/= monthly. It was then offered to him for sale, an offer he accepted. But things then took a strange twist and the same land was offered to the defendant and the Commissioner of land allotted it to the defendant later. The plaintiff wants to recover the land. He filed this suit seeking various orders.
2. Later on – 24/10/2012 to be specific – the plaintiff filed a Notice of Motion Under a Certificate of urgency seeking an order of inhibition inhibiting all dealings including transfer, leasing and charging of the Land until the suit is heard and determined. That application is the subject of this ruling.
3. The application is brought under order 40 Rule 10 of Civil Procedure Rules, Section 3, 3A, 1A and 1B of Civil procedure Act (cap 21) Section 68 of Land Registration Act 2012, and all enabling provisions of law.
4. From the supporting affidavit that came with the application, it is deponed, inter alia, that the defendant is the registered owner of the Land.

It is feared that the defendant can sell, charge or otherwise part with its interest in the property. In the event that happens the suit would be rendered nugatory.

5. The defendant made a response through what is essentially a replying affidavit but it captioned “supporting affidavit”. The same is dated 4/2/2013 and was filed on the same date.
6. The defendant said there are no intentions to deal with the land in the manner alleged by the plaintiff. He also dispelled allegations that some trustees are non - Kenyans who might leave the Country.
7. Submissions were filed in lieu of hearing. According to the plaintiff, the ownership of the Land is contested and the court, in an earlier ruling, established that the plaintiff has a reasonable cause of action,. The orders sought are necessary to protect third parties who might innocently acquire interest in the land through sale, charge or other process.
8. The defendant on the other hand said there is no intention of disposing of its interest in the property in any way. The plaintiff is accused of not disclosing his source of information that the

- plaintiff is winding up part of its operations.
9. I have considered the material laid before me by both sides. The defendant has pointed out that some allegations made by the plaintiff can not stand serious scrutiny and I agree. For instance, the Certificate of urgency talks of possibility of the plaintiff winding up some of its operations. The defendant has denied this. The plaintiff has not deemed it fit to demonstrate that this allegation has weight. At the end of it all, the allegation remains just that, an allegation. It is not proven. It is not substantiated.
 10. At the core of the application is the fear that the defendant might sell, charge or otherwise dispose of the property. I need to point out that the fear must be demonstrated to be real and well founded. The defendant needed to demonstrate that there is real risk that the property will be disposed of. A mere feeling of such fear is not enough.
 11. The applicable law is simple. **Makau J.** articulated it well in **JAPHET KAIMENYI M. NDATHO VS M. NDOTHO M' MBWIRIA {2012} eKLR** it is as follows:
 - (a) The applicant must show that the suit property is at risk of being disposed of or alienated or transferred to the detriment of the applicant.
 - (b) That refusal to grant inhibition would render the suit, nugatory.
 - (c) The applicant has an arguable case.
 12. This legal position was cited with approval by **L.N. Gecheru J.** in **ROSE MARY WANJIKU NGUGI** (Suing as next of friend and wife of **Peter Ngigi Kamori**) **VS Nancy MWAJIRU NGIGI.**
 13. In this suit the plaintiff has not demonstrated that the land is at risk of being disposed of. What is stated is a mere allegation. The defendant has clearly stated it has no intention of disposing of the suit property. It should be clear to the plaintiff that where an allegation is made, and that allegation is denied by the other side, then allegation remains unproven unless something more is done to prove it.
 14. And some of the information made by the plaintiff required disclosure of source. For instance, how can you talk of winding up operations without stating where you got that information from?

As long as the source remains undisclosed, the allegation remains a mere rumour. The court can not place reliance on it.
 15. One the other reason given by the plaintiff is that third parties might innocently buy the property. One must pause here and ask whether the plaintiff is representing third parties. I think it would be wrong to assume brief for undisclosed third parties.
 16. When all is said and done, the plaintiff has not done a good job of demonstrating that he merits the orders sought. Accordingly, the application herein is found unmeritorious and the same is dismissed with costs.

A. K. KANIARU

ENVIRONMENT & LAND – JDUGE

7/5/2015

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A.K. Kaniaru J.

John Ogendo court clerk

No party present

Interpretation English/Kiswahili

M/s Alinaitwe for Otieno for plaintiff

Court: ruling on application filed on 24/10/2012 read and delivered in open court.

Right of appeal 30 days.

A. K. KANIARU

ENVIRONMENT & LAND – JDUGE

7/5/2015