



**REPUBLIC OF KENYA**

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

**CIVIL CASE 28 OF 2015**

**ACTION RICH INVESTMENT COMPANY LTD.....PLAINTIFF/APPLICANT**

**VERSUS**

**JOSEPH OTIENO ONYANGO .....1ST DEFENDANT/RESPONDENT**

**EVANS ODERA NYAKIGO.....2ND DEFENDANT/RESPONDENT**

**THE LAND REGISTRAR KISUMU.....3RD DEFENDANT/RESPONDENT**

**THE ATTORNEY-GENERAL.....4TH DEFENDANT/RESPONDENT**

**R U L I N G**

1. The application by the plaintiffs dated 7th July 2015 prays for the following orders:
  1. **THAT this matter be certified urgent and service of this application be dispensed with in the first instance owing to the urgency hereof;**
  2. **THAT the court be pleased to order the 1st and 2nd defendants to furnish security by depositing into this honorable court the sum of Kshs.18,087,000/= or to produce and place at the disposal of the honourable court, or in a joint interest earning account in the names of the 1st and 2nd defendants and plaintiff's advocates pending the hearing and determination**
  3. **THAT the court be pleased to order the 1st and 2nd defendants to furnish security by depositing into this Honourable Court the sum of Kshs.18,087,000/= or to produce and place at the disposal of this Honourable court, or in a joint interest earning account in the names of the 1st and 2nd defendants' and plaintiff's advocates pending the hearing and determination of this suit;**
  4. **THAT in the alternative, the 1st and 2nd defendants give such acceptable security or guarantee commensurate to Kshs.18,087,000/= acceptable to the plaintiff in such prescribed form and manner from a reputable bank or banks licensed to conduct the business of banking in Kenya and to place the same under the control of this honourable court pending the hearing and determination of this suit**
  5. **THAT the 1st and 2nd defendants do disclose to this honorable court their business and assets in Kenya and the same to be conditionally attached until the determination of the suit.**
  6. **THAT in default of furnishing such sufficient, security deposit or bank guarantee as shall be ordered by this Honourable court the 1st and 2nd defendants do show cause why all sums of money due to them from business and any assets should not be attached by the court pending judgment by this honourable court and that costs be provided for;**

7. **THAT this honourable court be pleased to issued such further orders as may deem just; and**
8. **THAT the costs of this application be provided for.**

2. The affidavit of **PETER AKEYO** sworn on the even date clearly shows that the plaintiffs entered into a sale agreement dated 22th September, 2014 for the purchase of land parcel No. **KISUMU/DAGO/3527** for a total purchase consideration of Kshs.21,870,000/= and todate the plaintiffs have paid a total sum of Kshs.18,087.000 a fact not disputed by the defendants.

3. Apparently the contract was frustrated when the plaintiffs discovered that the suit property had other interested players and that it was not possible to have it transferred to the plaintiffs The applicants then put a caution over the same only to realise that there was already a caution by another party and that it was a subject of police investigation.

4. The respondents according to the documents on record promised to pay back the purchase consideration but it appears that they have not done so to-date.

5. As stated earlier the defendants did not contest this application. Clearly they are not objecting to the fact that they have received the said sum of money.

6. Consequently I do find that the only recourse is for the court to allow the application on the following terms:

1. **the 1st and 2nd defendant jointly and severally do refund within 7 days from the date herein the sum of Kshs,18,087,000 forthwith to the plaintiff.**
2. **Alternatively the defendants within 7 days from the date herein do deposit to this court a Bank Guarantee from reputable commercial bank for the sum of Kshs.18,087,000.**
3. **Costs of this application to the applicant.**

**Dated, signed and delivered this 1st day of December 2015**

**H. K. CHEMITEI**

**J U D G E**