



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: KWACH, TUNOI & SHAH, J.J.A.)**

**CIVIL APPLICATION NO. NAI. 311 OF 1998**

**BETWEEN**

**CANELAND LIMITED ..... APPLICANT**

**AND**

**THE COMMISSIONER OF LANDS .....1ST RESPONDENT**

**C. M. OSIRI ..... 2ND RESPONDENT**

**GEORGE ODIDI ..... 3RD RESPONDENT**

**E. BIEGON .....4TH RESPONDENT**

**BEATRICE MUMO .....5TH RESPONDENT**

**NYANZA ENTERPRISES LTD. ....6TH RESPONDENT**

**(Application for stay of execution in an intended Appeal  
from an Order of the High Court of Kenya at Kisumu  
(Wambilyangah, J) given on 19th November, 1998**

**in**

**H.C.C.C.C. NO. 219 OF 1996)**

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**RULING**

The applicant seeks an order for a stay of execution of the order by which the learned Judge struck out the applicant's suit in the superior court. It was averred in the plaint that the applicant became possessed of a letter of allotment Reference Number 100630 dated 19th October, 1979 resting in it the allotted property now known as Kisumu Municipality Block 6/461 but the 1st respondent in total disregard to the applicant's legal and equitable rights on the suit property allocated the same property to the 2nd, 3rd, 4th and 5th respondents who promptly transferred their rights therein to the 6th respondent who is now the registered proprietor of the property and is possessed of title.

The learned Judge was of the view that because of the provisions of section 28 of the Registered Land Act the rights of the 6th respondent as the registered owner cannot be defeated by misconceived equitable

rights of a stranger like the applicant.

Though the applicant obtained a letter of allotment over the same property several years back it did not perfect it into a title and the 2nd, 3rd, 4th and 5th respondents who obtained another letter of allotment on 14th March, 1996 proceeded to obtain and transfer title in favour of the 6th respondent.

We think that the ruling of the learned Judge cannot be faulted as far as his observations of sections 27 and 28 of the Registered Land Act are concerned. The applicant's intended appeal will not have arguable grounds of appeal. However, we hasten to add that a good cause of action may exist if the pleadings are properly laid. We reject this application which we dismiss with costs.

Made at Nairobi this 16th day of December, 1998.

**R.** **O.** **KWACH**  
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**JUDGE OF APPEAL**

**P.** **K.** **TUNOI**  
.....

**JUDGE OF APPEAL**

**A.** **B.** **SHAH**  
.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

DEPUTY REGISTRAR