



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 119 OF 2018

PETER NUGI NG'ANG'A.....PLAINTIFF

VERSUS

NATIONAL INDUSTRIAL

CREDIT (NIC) BANK LTD.....1ST DEFENDANT

JOSPHAT KARIUKI MWAURA.....2ND DEFENDANT

THE COUNTY LAND REGISTRAR,

UASIN GISHU.....3RD DEFENDANT

THE COUNTY LAND REGISTRAR, KAKAMEGA.....4TH DEFENDANT

MIRIAM OKADA.....5TH DEFENDANT

DIRECTIONS

1. The application dated 21/1/2019 and filed in court on the same date has been brought by the plaintiff. It seeks the following orders:-

- (1)spent
- (2)spent
- (3) **That the interim orders be confirmed at the inter partes hearing until the suit is heard and determined.**
- (4) **That this court be pleased to make any further orders necessary for the ends of justice.**
- (5) **Costs be provided for.**

2. The applicant has brought the application under **Order 1A, 1B and 63(e)** of the **Civil Procedure Act and Order 40 rule 1 and 2 and 4(1) and Order 50 Rule 1 of the Civil Procedure Rules Article 159 of the Constitution.**

3. The grounds upon which the application is made are contained at the foot of the application. Briefly those grounds are that the plaintiff is the sole proprietor of **Title No. Moïs Bridge/Moïs Bridge/Bock 9(Nzoia Sisal)/8 and Nzoia/Moïs Bridge/Block 1/3769** which are due for forced sale; that the 2nd defendant secretly took a loan from the 1st defendant without the consent and knowledge of the plaintiff; that the 5th defendant presented herself a spouse of the plaintiff; that the plaintiff and his deceased wife had no capacity to sign the charge documents; that the charge is defective and incapable of enforcement and that unless stay is granted the plaintiff shall suffer irreparable damage.

4. The application is supported by a 27 paragraph affidavit of the applicant dated 21/1/2019 which lays emphasis on the above grounds. Annexed to that affidavit is a copy of Title Deed for Moïs **Bridge/Moïs Block 9(Nzoia sisal)/8**, and a copy of a certificate of official search for **Nzoia/Moïs Bridge Block 1/3769** dated 20/11/2018.

5. In reply to the application the 1st defendant filed a replying affidavit on 23/1/2019 sworn by **Stephen Atenya**, the **Senior Manager - Legal Services.**

6. The 2nd defendant filed his replying affidavit on 14/2/2019.

7. The 5th defendant filed her reply to the application on 14/2/2019.

8. The 3rd and 4th defendants did not file any reply to the application.

9. Having perused through the application and the responses thereto, I find that this is a matter concerning the legality of a charge. On the basis of the Court of Appeal decision in **Civil Appeal No. 83 of 2016** between **Co-operative Bank of Kenya Limited and Patrick Kangethe Njuguna** I hereby order that this suit be transferred to the High Court for hearing and final determination. The Deputy Registrar shall within **7 days** with notice to the parties and having regard to the Presiding Judge's diary place the file before him for a mention for directions as to hearing of the application and the suit.

It is so ordered.

Dated, signed and delivered at Kitale on this 28th day of March, 2019.

MWANGI NJOROGE

JUDGE

28/03/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Wanyonyi for plaintiff/applicant

Ms. Mugi holding brief for Mumia for 1st respondent

COURT

Directions of this court read in open court.

MWANGI NJOROGE

JUDGE

28/03/2019