



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**CIVIL SUIT NO. 3462 OF 1995**

**OFFICIAL RECEIVER & LIQUIDATOR OF**

**CONTINENTAL CREDIT FINANCE LIMITED.....1<sup>ST</sup> PLAINTIFF**

**KISAUNI PROPERTIES LIMITED.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ZAVERCHAND RAMJI SHAH.....1<sup>ST</sup> DEFENDANT**

**REGISTRAR OF TITLES, GOVERNMENT LAND REGISTRY NAIROBI...2<sup>ND</sup> DEFENDANT**

**JARED BENSON KANGWANA.....3<sup>RD</sup> DEFENDANT**

**SHEIKH SALIM MOHAMMED BALALA.....4<sup>TH</sup> DEFENDANT**

**THEOFILO MUCHIRI.....5<sup>TH</sup> DEFENDANT**

**PETER MIRIIE ZAKAYO.....6<sup>TH</sup> DEFENDANT**

**LAWRENCE M. MBAABU T/A**

**L.M. MBAABU & CO ADVOCATES.....7<sup>TH</sup> DEFENDANT**

**AND**

**SUSAN SALMA SCHIELE.....1<sup>ST</sup> PROPOSED INTERESTED PARTY/APPLICANT**

**WHITE MEG INDUSTRIES LIMITED.....2<sup>ND</sup> PROPOSED INTERESTED PARTY**

**M.KHODA INVESTMENTS LIMITED.....3<sup>RD</sup> PROPOSED INTERESTED PARTY**

**RULING**

1) On 8<sup>th</sup> May 2015, this court delivered its ruling over other prayers save for prayers 4, 6, 6 and 7 of the motion dated 8.11.2011. This court declined to make a determination on the aforesaid prayers to enable the parties decide on whether or not to allow the participation of the 3<sup>rd</sup> and 4<sup>th</sup> defendants. Eventually, the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants filed their submissions whereof they sought for the dismissal of the aforesaid motion.

2) I have considered the grounds stated on the face of the motion dated 8<sup>th</sup> November 2011 and the written submissions. It is noted from the outset that the Hon. Attorney General who appeared for the 2<sup>nd</sup> and 7<sup>th</sup> defendants did not respond to the motion dated 8.11.2011. In the motion dated 8.11.2011, the applicant sought for the following orders inter alia:

**1. ....**

**2. ....**

3. ....

4. THAT the consent order recorded in this suit on 9<sup>th</sup> August 2010, the court order dated 11<sup>th</sup> August 2010 ensuing therefrom and the subsequent vesting order issued by this court on 25<sup>th</sup> January 2011 to give effect to the said consent orders in as far as they relate to the parcel of land known as LR. 4242/42 be and rare hereby set aside.

5. THAT the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> and 3<sup>rd</sup> Interested Parties be and are hereby restrained by themselves, their servants, agents or by any person claiming under or through them from disposing off and/or interfering in any manner whatsoever with the 1<sup>st</sup> Interested Party's/applicant's quiet possession of LR No 4242/42 Nairobi and all the improvements thereon.

6. THAT the 2<sup>nd</sup> Defendant do expunge from the lands record all entries in the Lands Register for the parcel of land known as LR. NO.4242/42 subsequent to the Vesting order issued by this court on 25<sup>th</sup> January 2011 and reinstate all the entries existing on the Lands register for the said parcel of land prior thereto.

7. THAT pending the hearing and determination of this application, this honourable court be pleased to issue an interim order of injunction in terms of prayer 5 hereinabove.

3) In this court's ruling of 8.5.2015, it was noted that the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants filed the replying affidavit of Milton Imanyara and that of the 1<sup>st</sup> defendant to oppose the motion. The 1<sup>st</sup> plaintiff too filed the further replying affidavit of Patrick Thoithi Kanyuira to resist the motion. I have considered the dispositions of the parties and their submissions. I have further considered the facts deponed in the replying affidavit of Jared Benson Kangwana plus the supporting affidavit of Susan Salma Schiele.

4) It is the submission of the applicants that the consent order recorded on 9.8.2010 affected interests of third parties who were not parties to the suit and the consent. The applicants aver that they should have been consulted prior to the recording of the consent order. The 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants are of the view that the 1<sup>st</sup> interested party was aware of the existence of this suit but went ahead to obtain titles while this suit was pending hence she is affected by the doctrine of **lis pendens**. It was pointed out by the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants' advocates that at the time of purchase by the 1<sup>st</sup> defendant, the 3<sup>rd</sup> and 4<sup>th</sup> defendants had sold their shares in the 2<sup>nd</sup> plaintiff company to the 5<sup>th</sup> and 6<sup>th</sup> defendants but later the 3<sup>rd</sup> and 4<sup>th</sup> defendants disowned the sale of the aforesaid shares and therefore ownership of the 2<sup>nd</sup> plaintiff reverted to the 1<sup>st</sup> plaintiff. It is the 1<sup>st</sup> defendant's argument that he instructed his advocates to enter into a consent conceding proprietorship rights to the plaintiffs. This court was beseeched to find that the suit property should not be issued to the 1<sup>st</sup> Interested Party because the 1<sup>st</sup> defendant could not have transferred what he did not have in the first place. It is further argued that the doctrine of innocent purchaser for value cannot arise.

5) Having considered the material placed before this court and the arguments of the parties, it is clear that the consent order withdrawing the suit as against the 3<sup>rd</sup> and 4<sup>th</sup> defendant was recorded on 20.2.2008 which the current motion does not make reference to. It is also apparent that the suit having been withdrawn the 3<sup>rd</sup> and 4<sup>th</sup> defendants have not participated in any way in the consequent proceedings hence they are strangers to this matter. This court was urged to review its decision to reinstate the 3<sup>rd</sup> and 4<sup>th</sup> defendant. It was also pointed out that this court wrongly set aside the consent order which had removed the 3<sup>rd</sup> and 4<sup>th</sup> defendants from suit without sufficient reason.

6) In the final analysis I am satisfied that the 1<sup>st</sup> defendant has proved that he could not have passed a good title and rights to Whitemeg Industries Ltd, the 2<sup>nd</sup> interested party. Consequently, I am satisfied that the application dated 8<sup>th</sup> November, 2011 should be dismissed so far as it relates to the 3<sup>rd</sup> and 4<sup>th</sup> defendants and that the ruling on 31.5.2017 that reinstated the suit against the 3<sup>rd</sup> and 4<sup>th</sup> defendants is set aside forthwith.

7) In the end, I find no merit in the motion dated 8.11.2011. The same is dismissed with no orders as to costs.

Dated, Signed and Delivered in open court this 29<sup>th</sup> day of January, 2018.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant