



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL SUIT NO. 3462 OF 1995

**OFFICIAL RECEIVER & LIQUIDATOR OF
CONTINENTAL CREDIT FINANCE LIMITED..... 1ST PLAINTIFF**

KISAUNI PROPERTIES LIMITED2ND PLAINTIFF

VERSUS

ZAVERCHAND RAMJI SHAH 1ST DEFENDANT

REGISTRAR OF TITLES, GOVERNMENT

LAND REGISTRY NAIROBI... 2ND DEFENDANT

JARED BENSON KANGWANA..... 3RD DEFENDANT

SHEIKH SALIM MOHAMMED BALALA..... 4TH DEFENDANT

THEOFILO MUCHIRI 5TH DEFENDANT

PETER MIRIIE ZAKAYO 6TH DEFENDANT

LAWRENCE M. MBAABU T/A

L.M. MBAABU & CO ADVOCATES..... 7TH DEFENDANT

AND

SUSAN SALMA

SCHIELE 1ST PROPOSED INTERESTED PARTY/APPLICANT

WHITE MEG INDUSTRIES

LIMITED 2ND PROPOSED INTERESTED PARTY

M.KHODA INVESTMENTS

LIMITED 3RD PROPOSED INTERESTED PARTY

RULING

1. On 8th May 2015, this court issued an order enjoining Susana Salma Schiele, White Meg Industries Ltd and M. Khoda Investments Ltd as the 1st, 2nd and 3rd Interested parties respectively in this suit in terms of prayers 2 and 3 of the motion dated 8th November 2011. This court declined to make a determination on prayers 4, 5, 6 and 7 of the aforesaid motion and gave the parties an option elect whether or not to have Jared Benson Kangwana and Sheikh Salim Mohammed Balala, the 3rd and 4th defendants respectively reinstated to this suit. After several mentions, learned counsels appearing in this matter informed this court that they were unable to agree over the issue. This court consequently invited them to make oral submissions to enable it decide the issue.
2. Mr. Thiga, learned advocate for the 1st Interested party urged this court to make a determination on prayers 4, 5, 6 and 7 of the motion notwithstanding the fact that the 3rd and 4th defendants have not been reinstated and re-enjoined to this suit as such. Mr. Thiga further argued that the order making the matter settled should be set aside.
3. Mr. Imanyara, learned advocate for the 1st, 5th and 6th defendants, the 2nd and 3rd Interested parties, was of the view that there is need to first set aside the order which allowed the 3rd and 4th defendants to be disenjoined from the suit. Mr. Imanyara did not want to commit himself but urged this court to instead determine the issue.
4. I have already stated that I determined prayers 1, 2, and 3 of the motion dated 8.11.2011. The prayers which were left for determination are prayers 4, 5, 6 and 7 in which Susan Salma Shiele, the 1st Interested party sought for the following orders:
 - i. ***THAT the consent order recorded in this suit on 9th August 2010, the court order dated 11th August 2010 ensuing therefrom and the subsequent vesting order issued by this court on 25th 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 are hereby set aside.***
 - ii. ***THAT the 1st defendant and the 2nd and 3rd 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 1st Interested Party's/Applicant's quiet possession of LE No. 4242/42 Nairobi and all the improvements thereon.***
 - iii. ***THAT the 2nd 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 25th January 2011 and reinstate all the entries existing on the lands register for the said parcel of land prior thereto.***
 - iv. ***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.***
5. A careful perusal of prayer 4 will show that the 1st Interested party is applying for inter alia the setting aside of the consent order recorded on 9th August 2010. There is an allegation that the aforesaid consent order was obtained by fraud, coercion and undue pressure on the part of the 3rd and 4th defendants. There is a specific allegation by Zaverchand Ramji Shah, the 1st defendant that the 3rd and 4th defendants dropped out of this suit when the duo realized some fraudulent activities taking place. The allegations that fraud, coercion and undue pressure were used to obtain the consent order are very serious allegations which can lead to the setting aside of the consent orders recorded on 9th August 2010. In my considered view and in the circumstances of

this case, it is important to hear Mssrs Jared Benson Kangwana and Sheikh Salim Mohammed Balala before determining prayers 4, 5, 6 and 7 of the motion. The easier way of having them participate in these proceedings is by setting aside the consent order which removed the 2nd and 3rd defendants as parties to this suit. Consequently, I *ex debito justitae* order that **Jared Benson Kangwana and Sheikh Salim Mohammed Balala** be reinstated to this suit as the 3rd and 4th defendants. The motion dated 8.11.2011 together with this ruling be served by the 1st Interested party's advocate upon the 3rd and 4th defendants and or their advocates with a hearing notice for **13th July 2016**. The reinstated defendants are given 21 days from the date of service to file and serve their responses and written submissions.

Dated, Signed and Delivered in open court this 31st day of May, 2016.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant