



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 94 OF 1996

**IN THE MATTER OF THE ESTATE OF THE LATE SOLOMON MUCHIRI MACHARIA -
DECEASED**

JANE WANJIRU MUCHIRI.....PETITIONER

VERSUS

PHOEBE WATETU MUCHIRI.....OBJECTOR

AND

JOSEPH NDUNGU MUCHIRI.....1ST INTERESTED PARTY

GERALD GACHOKA WARUI.....1ST INTERESTED PARTY

RULING

By way of a summons general dated 4th June 2014 expressed under the provisions of Rule 73 of the Probate and Administration Rules, **Jane Wanjiru Muchiri** (hereinafter referred to as the applicant) moved this court seeking orders:-

- a. *Prohibiting the transfer or any dealings with title numbers Nyeri/Endarasha/ 3344, 3504, and 3505 created after sub-division of title number Nyeri/ Endarasha/61.*
- b. *Cancellation, combination and consolidation of Nyeri/Endarasha/ 3344, 3504, and 3505.*
- c. *That the costs of the application be borne by the applicant.*

The application is premised on the grounds that:-

- a. *that title number Nyeri/Endarasha/61 ought to have been shared equally between the applicant **Jane Wanjiru Muchiri** and the objector **Phoebe Watetu Muchiri** as ordered by the court of appeal on 13. 12.2012 in civil appeal number 29 of 2008;*
- b. *that the sub-divisions creating the above titles were carried out to subvert the court orders.*
- c. *that the above transactions were done without the consent of the Land Control Board or the applicant and number 3505 was registered in the name of a one **Joseph Ndungu Muchiri**, number 3504 was registered in the name of **Phoebe Watetu Muchiri** while 3344 was registered in the applicants name.*

d. that the said subdivision was contrary to a court of appeal decision dated 13.12.12 and a blatant disregard of the said court order.

The grant issued on 17th February 2014 shows that the estate comprising of title number **Endarasha/Scheme/61** was to be shared equally between the applicant and the objector. Also, the court of appeal judgement rendered in Civil Appeal number **29 of 2008** on 13th December 2012 states in clear terms that land title number **Nyeri/Endarasha/61** comprising of approximately **4.1 ha.** be shared equally by **Jane Wanjiru Muchiri** and **Phoebe Watetu Muchiri**.

The objector filed a replying affidavit dated 4th February 2015 in which she averred *inter alia* as follows:-

- a. that she obtained an order that the Deputy Registrar of the court executes the requisite transfer documents and that the applicants application for stay was disallowed on 11th December 2009 and that the application for stay having been refused, there was nothing to stop the process of enforcing the high court decision.
- b. that the caution was removed after a hearing before the land Registrar where both parties and their advocates participated hence the subdivision process was done properly and prior the court of appeal decision.

The first interested party **Joseph Ndungu Muchiri** filed an affidavit dated 24th April 2015 in which he states *inter alia* that the application forms for Land Control Board Consent were executed by the Deputy Registrar, that the Land Control Board Consent was granted on 20th May 2009 and that there was no stay of execution at the time the land parcel number **Nyeri/Endarasha/3505** was transferred to him.

The second interested party **Gerald Gachoka Warui** in his affidavit filed on 27th April 2015 states that he is the registered proprietor of **Nyeri/Endaraha/3505** and that the title was issued to him on 12th October 2010, that he purchased the said land from the objector in January 2010, that he purchased **2.471** acres which were hived from the objectors share and the objector remains with **2.529** acres, hence his portion now parcel number **3504** will not be affected by the intended consolidation, that he has been in occupation since 2010 and has made extensive developments as shown by the photographs annexed to his affidavit, that if his portion is left intact, it will not affect the applicants entitlement.

Gathiga Mwangi for the applicant argued that the Court of Appeal reversed the high court judgement and urged the court to effect the said decision and order that the above titles be cancelled and consolidated. Counsel submitted that under Rules **73** and **49** of the Probate and Administration Rules, this court has powers to allow the orders sought. Counsel also urged the court to invoke the provisions of Article **159 (2) (d)** of the Constitution of Kenya 2010 and Section **47** of the Law of Succession Act.[\[1\]](#) Counsel also submitted that the Respondent is a co-wife of the applicant while the first interested party is a son to the first wife. Counsel insisted that the parties acted to defeat the court order.

Mr. Muhoho for the objector opposed the application and insisted that as at the time of the sub-division, the court of appeal decision had not been rendered hence the transfer was done legally. Counsel insisted that the court of appeal judgement had been overtaken by events and insisted that the applicant can get recourse in the Environment and Land Court.

Mr. Muthui for the first interested party submitted that the land is no-longer in existence having been extinguished in 2009, that the new numbers were not brought to the attention of the Court of Appeal and that the land is owned by persons who were not parties to the appeal, and insisted that the applicant ought to file a suit in the Environment and Land Court to challenge the transfer.

In my view, the point raised by **Mr. Muthui**, that is, the new numbers were not brought to the attention of the Court of Appeal raises a fundamental question of the duty of parties to litigation to disclose to the court all the relevant materials. I will shortly address this issue.

Mr. Kihara for the second interested party essentially adopted the affidavit filed by his client and insisted that the second interested party genuinely purchased his land from the objector who never disclosed the issues now before the court, that the second interested party has been in occupation since he purchased the land and he has substantially developed the land and that his portion will not affect the proposed sub-division in the event the court allows or disallows the application and urged the court to allow the portion to remain the way it is. Counsel pointed out that the portion claimed by the applicant can be accommodated within the acreage held by the objector and her son.

It is not in dispute that at the time title number *Nyeri/ Endarasha/61* was sub-divided into the various parcels of land referred to above Civil Appeal number **29** of **2008** was still pending in court awaiting determination. Interestingly, the objector does not deny the pendency of the said appeal but maintains there was no stay implying that there was nothing to stop the implementation of the high court judgement. Consequently, the objector implemented the High Court decision and sub-divided the land as aforesaid. Ultimately, the court of appeal rendered its decision on 13th December 2012 and over turned the high court judgement. The court of appeal decreed that the said land be shared equally between the applicant and the objector. The objector and the first interested party maintain that the Court of Appeal decision was overtaken by events.

It is also not in dispute that on 11th December 2009, the court of appeal in Civil Application number **60** of **2009** declined to stay the high court judgement, the subject of the above appeal, but in dismissing the said application, the court of appeal observed that there was no evidence at all before the court that the objector who was the respondent in the said application was proposing to dispose her portion of land. In my view, the stay was declined because the court was satisfied that there was nothing to show that the property was under any threat at that point in time.

However, during the pendency of the said appeal and prior to its determination, the objector sub-divided the said title number *Nyeri/ Endarasha/61* into two portions, one measuring **7.15** acres being title number *Nyeri/ Endarasha/3345* registered in her name, i.e. **Phoebe Watetu Muchiri** and another portion measuring **3.15** acres being title number *Nyeri/ Endarasha/3344* registered in the name of the applicant **Jane Wanjiru Muchiri**. The mother title *Nyeri/ Endarasha/61* was closed on sub-division on 20.7.2010.

Further, the objector caused title number *Nyeri/ Endarasha/3345* to be divided into title numbers *Nyeri/ Endarasha/3504* and *Nyeri/ Endarasha/3505* and caused the said titles to be transferred to **Gerald Gachoka Warui** the second objector and to her son **Joseph Ndungu Muchiri** the first objector respectively.

The crucial issues for determination are, **(a)** what is the effect of the aforementioned sub-division and transfers which were all effected during the pendency of Civil Appeal number **29** of **2008**? **(b)** Was the aforesaid sub-divisions and transfers effected with a view to defeating or frustrating the outcome of the pending appeal?. **(c)** Can the transfer to the interested parties be allowed to stand in law?. **(d)** Did the Respondent owe a duty to the Court of Appeal to disclose that the land had been sub-divided?

I propose to address the last question first. I find it rather disturbing that a party could sub-divide and dispose of land the subject of an appeal and continue participating in the appeal and fail to disclose to the court such crucial and relevant information.

It is settled law that a person who approaches the Court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have a bearing on the adjudication of the issues raised in the case. In other words, he/she owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material facts within his/her knowledge or which he/she could have known by exercising diligence expected of a person of ordinary prudence. If he/she is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. This position was well captured in one of the earliest decisions on the subject rendered in 1917 in *R. v. Kensington Income Tax Commissioner*^[2] by Viscount Reading, Chief Justice of the Divisional Court.

Also in the case of *Brinks-Mat Ltd vs Elcombe*,^[3] it was held that a party is under a duty to disclose to the court all relevant information even if it is not to his or her advantage. I strongly hold the view that the Respondent were under a solemn duty to bring to the attention of the Court of Appeal the crucial developments that had taken place which had altered the subject matter to the appeal.

Issues (a)-(c) listed above bring into sharp focus the doctrine of *lis pendens* and whether the said doctrine applies to properties registered under the repealed Registered Land Act^[4] and now governed by The Land Act, 2012^[5] and The Land Registration Act, 2012.^[6]

Section 162 (1) of The Land Act, 2012^[7] on savings and transitional provisions with respect to rights, actions, dispositions etc provides that unless the contrary is specifically provided in the Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of the Act shall continue to be governed by the law applicable to it immediately prior to the commencement of the Act.

Section 163 of the Registered Land Act^[8] (Repealed) provided for the application of the common law of England, as modified by the doctrines of equity in relation to land, leases and charges registered under the said Act and interests therein. Thus, even though there is no express provision invoking the application of the doctrine of *lis pendens* either in the Registered Land Act (Repealed) as opposed to the express provisions of Section 52 of the Transfer of Property Act, 1882 (Repealed) the said common law doctrine of *lis pendens* was imported into Kenya by virtue of the provisions of Section 163 of The Registered Land Act (Repealed) which continues to apply as provided under Section 162 (1) of the Land Act, 2012^[9] cited above.

My understanding of Section 163 of the Registered Land Act, (Repealed) cited above is that the said section provided for the application of common law of England and doctrines of equity to properties registered under Cap 300, hence *lis pendens* being a common law doctrine is applicable in the present case by virtue of the said section.

The common law doctrine of *lis pendens* effectively provides that during the pendency of a suit in which any right to immovable property is in question, the property cannot be transferred by any party to the suit so as to affect the rights of other parties.

The *Black's Law Dictionary*,^[10] defines *lis pendens* as the jurisdiction, power or control acquired by a court over property while a legal action is pending. The Supreme Court of India in the case of *KN Aswathnarayana Setty (D) Tr. LRs. & Ors Vs State of Karnataka & Ors.*^[11] stated that the doctrine of *lis pendens* is based on legal maxim '*ut lite pendente nihil innovetur*' (During a litigation nothing new should be introduced). The principle of '*lis pendens*' is in accordance with the equity, good conscience or justice because they rest upon an equitable and just foundation that it will be impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee *pendente lite* is bound by the decree just as much as he was a party to the suit. A litigating party is exempted from taking notice of a title acquired during the pendency of the litigation. However, it must be clear that mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject matter of the suit. The law simply postulates a condition that the alienation will, in no manner, affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the Court. The transferee cannot deprive the successful plaintiff of the fruits of the decree if he purchased the property *pendente lite*.^[12]

In *Rajender Singh & Ors. v. Santa Singh & Ors.*,^[13] while dealing with the application of doctrine of *lis pendens*, the Supreme Court of India held as under:-

“The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending by private dealings which may remove the subject matter of litigation from the ambit of the court’s power to decide a pending dispute or frustrate its decree.”

In *Manwji vs U.S. International University and Another*^[14] **Justice Madan**, while addressing the purpose of the principle of *lis pendens* adopted the finding in *Bellamy vs Sabine*^[15] where **Turner L J** held as follows:-

*“ It is a doctrine common to the courts both of law and equity, and rests, as I apprehend, upon this jurisdiction, that it would plainly be impossible that any action or suit could be brought to a successful determination, if alienation **pendente lite** were permitted to prevail. The Plaintiff would be liable in every case to be defeated by the Defendant’s alienating before the judgment or decree, and would be driven to commence his proceedings de novo, subject again to be defeated by the same course of proceedings.”*

In the same case, **Cranworth L J** observed as follows:-

“Where a litigation is pending between a Plaintiff and Defendant as to the right of a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding, not only on the litigating parties but also on those who derive title under them by alienation pending the suit whether such alienees had or had no notice of the proceedings. If that were so, there could be no certainty that the proceedings would ever end...”

The doctrine of *lis pendens* has also been discussed in the *Treaties by Mulla & Gour on the Indian Transfer of Property Act*.^[16] The two authors state as follows:-

“Every man is presumed to be attentive to what passes to the courts of justice of the state or sovereignty where he resides. Therefore, purchase made of property actually in litigation, pendete lite, for a valuable consideration, and without any express or implied notice in point of fact affects the purchase in the same manner as if he had such notice, and he will be accordingly be bound, by the judgment or decree in the suit.”

At page 241 of *Mulla’s Transfer of Property Act*, 6th Edition, the learned author states as follows:-

“The effect of the maxim is not to annul the conveyance but only to render it subservient to the rights of the parties subject to litigation.”

The above doctrine is in my view a doctrine recognized by the common law. It is based on expediency of the court. The doctrine of *lis pendens* is necessary for final adjudication of the matters before the court and in general interest of public policy and good and effective administrative of justice. It therefore overrides a title obtained during the pendency of proceedings touching on the property and prohibits a party from transferring property to others pending determination of the litigation on the parties rights on the property. *Lis pendens* is therefore the jurisdiction or control that courts obtain over property in a suit awaiting determination of the suit.

The broad principle underlying the above maxim is to maintain the *status quo* unaffected by the act of any party to the litigation pending its determination. The doctrine of *lis-pendens* is founded in public policy and equity and if it has to be read meaningfully it extends until an appeal is determined. As **Turner, L.J.** pointed out, the doctrine rests on the foundation *“That it would plainly be impossible that any action or suit could be brought to a successful termination, if alienations, pendente lite were permitted* to *prevail.”*

The basic ingredients of the doctrine are:-

- a. A litigation should be pending in a court of competent jurisdiction;
- b. The suit must be relating to a specific immovable property;
- c. The suit should not be collusive;
- d. The suit should relate to a right in this specific property;
- e. Property should not be transferred or otherwise dealt with;
- f. By any party to the suit;
- g. So as to affect the rights of any party thereto;

h. Till the final disposal of the case.

Any transfer of suit property or any dealing with such property during the pendency of the suit is prohibited except under the authority of the court. If anybody wants to alienate, he can do so only with the permission of the Court. The permission of the court was never sought in the present case. In fact, as observed above, it is lamentable that the process was concealed from the Court.

Mutungi J[17] dealing with the application of the doctrine of *les pendens* in a property registered under the Registered Land Act (Repealed) observed *inter alia* that

".....the doctrine of *lis pendens* being a common law doctrine is still applicable pursuant to Section 3(c) of the Judicature Act." [18]

W. M. Musyoka puts it even more clearer in his book *A Case Book on the Law of Succession*[19] at chapter 16 where he observes that

"the estate should not be distributed where there are contentious proceedings pending, whether for revocation of grant, reasonable provision or any other. The rationale is that the determination of such proceedings may affect the distribution, and it would be prudent therefore to await the outcome of any such proceedings."

The above position was restated by **Platt, Gachuhi JJA** and **Masime Ag. JA** in *Okoyana vs Musi & Another*[20] where they stated that distribution of an estate should not be done during the pendency of a contentious application or court proceedings.

I am persuaded that in the preset case, it was improper for the objector to purport to sub-divide and even transfer the properties in question while there was a pending appeal and her actions can reasonably be construed to have been done in bad faith and with the purpose of defeating or evading the final decision of the appeal. The first interested party is her son. He cannot be heard to say he was not a party to the court proceedings nor has he denied that he was aware of the existence of the protracted court case. Secondly, as for the second interested party a transferee *pendente lite* is bound by the decree just as much as he was a party to the suit. The above cited authorities are clear on this position.

Section 47 of the Law of Succession Act[21] enjoins the High Court to entertain any application and determine any dispute under the Law of Succession Act[22] and pronounce such decrees and make such orders therein as may be expedient. Further under Rule 73 of the Probate and Administration Rules it is provides:-

"73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Rule 49 of the Probate and Administration Rules provides that:-

"A person desiring to make an application to court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit"

Rule 59 (1) provides that *"save where otherwise provided in these rules every application to the court or to a registry shall be brought in the form of a petition, caveat or summons as may be appropriate."*

Section 80 of the Land Registration Act[23] provides as follows:-

Rectification by an order of the Court

(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.

Both interested parties have not demonstrated to the courts satisfaction that they can be afforded the protection provided under sub-rule (2) cited above. As observed earlier, I am not persuaded that the first interested party was not aware of the court proceedings nor has it been shown that he acquired the property for valuable consideration. In fact, the circumstances of the transfer do suggest possibility of collusion, fraud or both aimed at defeating the pending appeal.

Further, even assuming that both interested parties were *bona fide* purchasers for value, the position remains as held by **Cranworth L J** in the above cited case that

“Where a litigation is pending between a Plaintiff and Defendant as to the right of a particular estate, the necessities of mankind require that the decision of the court in the suit shall be binding, not only on the litigating parties but also on those who derive title under them by alienation pending the suit whether such alienees had or had no notice of the proceedings. If that were so, there could be no certainty that the proceedings would ever end...”

Also the doctrine of *lis pendens* as discussed in the *Treaties by Mulla & Gour on the Indian Transfer of Property Act* cited above, “Every man is presumed to be attentive to what passes to the courts of justice of the state or sovereignty where he resides. Therefore, purchase made of property actually in litigation, *pendete lite*, for a valuable consideration, and without any express or implied notice in point of fact affects the purchase in the same manner as if he had such notice, and he will be accordingly be bound, by the judgment or decree in the suit.”

Thus, both interested parties are bound by the judgement of the Court of Appeal just like the objector.

Lis pendens, literally meaning "litigation pending," originally referred to the common law doctrine that a buyer takes real property subject to the result of any pending litigation regardless of whether he knows of the lawsuit.' The doctrine prevented a property owner from frustrating the administration of justice by selling property which was the object of litigation.[24] Unfortunately, it also created hardship for purchasers who had not discovered a pending suit after a reasonable search.[25] Many States responded to this problem by enacting statutes that created a notice called a *lis pendens*. If this notice concerning the pendency of a suit was not recorded, the purchaser would not be bound by the ensuing judgment unless the purchaser had actual notice of the suit.[26] However, if such notice were recorded, the purchaser would have constructive notice of the pending action and would thus be bound by the judgment.[27] In my view, time has come for our land laws to be amended to provide for a *lis pendens* notice so as to protect the interests of *bona fide* purchasers for value.

Today, a *lis pendens* creates a cloud on title " that prevents dealings with the property until judgment has been entered and the time for appeal has expired, at which time the *lis pendens* expires.' To me, this remains the legal position in Kenya.

Upon considering the material before me, I find that the Applicant has demonstrated that Title number **Nyeri/Endaraha/61** was subdivided during the pendency of the Civil Appeal number **29 of 2008** and title numbers **Nyeri/Endarasha/ 3344** and **Nyeri/Endarasha/ 3345** created and further title number **Nyeri/Endarasha/ 3345** was sub-divided and title numbers **Nyeri/Endarasha/ 3504 and 3505** created out of the said sub-division.

Thus, out of the original title number **Nyeri/Endarasha/ 61**, presently there exists new titles numbers **Nyeri/Endarasha/ 3344** registered in the name of the applicant **Jane Wanjiru Muchiri** and title numbers **Nyeri/Endarasha/ 3504** registered in the name of the second interested party **Gerald Gachoka Warui** and title number **Nyeri/Endarasha/ 3505** registered in the name of the first interested party **Joseph Ndungu Muchiri**.

The above being the position, I am persuaded that the above titles were created wilfully and with the full knowledge of the existence of the pending appeal and by virtue of the above common law doctrine, the said titles cannot be allowed to stand on grounds that the sub-division and transfer was done fraudulently and or improperly in total breach of the above common law doctrine, and consequently the same is illegal, null and void and cannot be allowed to stand.

Accordingly I hereby allow the application dated 4th June 2014 and order as follows:-

- a. ***That*** the purported sub-division of title number **Nyeri/Endarasha/61** and creation of title numbers **Nyeri/Endarasha/3344** and **Nyeri/Endarasha/3345** be and is hereby declared null and void for all purposes on grounds that the said subdivision and creation of the said titles and purported transfer to **Jane Wanjiru Muchiri** and **Phoebe Watetu Muchiri** respectively was effected fraudulently, irregularly and in total disregard of the law.
- b. ***That*** the purported sub-division of title number **Nyeri/Endarasha/3345** and creation of title numbers **Nyeri/Endarasha/3504** and **Nyeri/Endarasha/3505** be and is hereby declared null and void for all purposes on grounds that the said subdivision and creation of the said titles and purported transfer to **Gerald Gachoka Warui** and **Joseph Ndungu Muchiri** respectively was effected fraudulently, irregularly and in total disregard of the law.
- c. ***That*** the Land Registrar, Nyeri County is hereby ordered to cancel the said registrations, transfers and Title Deeds in respect of land parcel numbers **Nyeri/Endarasha/3344**, **Nyeri/Endarasha/3504** and **Nyeri/Endarasha/3505**.
- d. ***That*** further, the Land Registrar, Nyeri County is hereby ordered to consolidate title numbers **Nyeri/Endarasha/3344**, **Nyeri/Endarasha/3504** and **Nyeri/Endarasha/3505** into one title, and revert back to the original number **Nyeri/Endarasha/61**.
- e. ***That*** upon consolidation of title numbers **Nyeri/Endarasha/3344**, **Nyeri/Endarasha/3504** and **Nyeri/Endarasha/3505** back to the original number **Nyeri/Endarasha/61** the Land Registrar Nyeri County is hereby ordered to cause the said title to be divided into two equal portions in conformity with the court of appeal decision rendered in Civil Appeal number **29 of 2008**, AND out of the said two equal portions, one portion to be registered in the name of **Jane Wanjiru Muchiri** and the other portion to be registered in the name of **Phoebe Watetu Muchiri**.
- f. ***That*** the Land Registrar, Nyeri County is hereby ordered to implement the orders granted within 60 days from the date of this order time being of essence.
- g. That the objector do pay the costs of this application to the applicant in any event.

Right of appeal **30** days

Dated at Nyeri this 24th day of May 2016

John M. Mativo

Judge

[1] Cap 160, Laws of Kenya

[2] {1917} 1 KB 486

[3] {1988} 3 ALL ER 188

[4] Cap 300, Laws of Kenya (Repealed)

[5] Act No. 6 of 2012

[6] Act No. 3 of 2012

[7] Supra

[8] Supra

[9] Supra

[10] 9th Edition

[11] Special Leave Petition (c) no.22311 of 2012 consolidated with SLP (C) Nos.22307-22309 of 2012

[12] [Vide : K. Adivi Naidu & Ors. vs. E. Duruvasulu Naidu & Ors., (1995) 6 SCC 150; Venkatrao Anantdeo Joshi & Ors. vs. Malatibai & Ors., (2003) 1 SCC 722; Raj Kumar vs. Sardari Lal & Ors., (2004) 2 SCC 601; and Sanjay Verma v. Manik Roy & Ors., AIR 2007 SC 1332).

[13] AIR 1973 SC 2537,

[14] {1976-80} KLR 229

[15] {1857} 1 De J 566, 584

[16] Mulla, 5th Edition, page 245 and Gour, 7th edition, Vol.1, Page 579

[17] Olympic Company Trading Ltd vs Said Mohamed, E.L.C No. 259 of 2012

[18] Cap 8, laws of Kenya

[19] LawAfrica, Nairobi, at page 345

[20]{1987} KLR 104

[21] Supra

[22] Ibid

[23] Supra

[24]Newman v. Chapman, 23 Va. (2 Rand.) 93, 102 (1823); accord Holbrook v. New Jersey Zinc Co., 57 N.Y. 616, 629 (1874).

[25]Sampson v. Ohleyer, 22 Cal. 200,210-11 (1863); 3 American Law of Property § 13.12 (Casner ed. 1952).

[26] 3 American Law of Property § 13.12 (Casner ed. 1952); 4 id § 17.11. California enacted its lis pendens statute in 1851. Code of Practice § 27, 1851 Cal. Stat. 51, 54 (current version at CAL. CIV. PROC. CODE § 409 (West Supp. 1981)).

[27]Albertson v. Raboff, 46 Cal. 2d 375, 379, 295 P.2d 405, 408 (1956).

