



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL CASE NO 705 OF 2009

SEHIT INVESTMENTS LIMITED..... PLAINTIFF

VERSUS

JOSEPHINE AKOTH ONYANGO.....1ST DEFENDANT

SIMON OTIENO.....2ND DEFENDANT

SAVINGS & LOAN KENYA LIMITED.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

INTRODUCTION

1. The Plaintiff's Chamber Summons application dated 24th September 2009 and filed on 25th September 2009 was brought pursuant to the provisions of Order XXXIX (Now Order 40 of the Civil Procedure Rules, 2010) Rules 2 and 7 of the Civil Procedure Rules Cap 21 of the Laws of Kenya, Section 25 (3) of the Judicature Acts of England (1875) the inherent powers of the court and other enabling provisions of the law and Section 75 of the Registrar (sic) of Titles Act Cap 281 (now repealed). Prayer Nos (1), (2) and (3) of the said application were spent. It sought the following remaining orders:

1. Spent.
2. Spent.
3. Spent.
4. Pending the hearing and determination of this suit, an injunction do issue against the 1st and 3rd Defendants restraining them either by themselves, their servants, agents, or otherwise howsoever from selling, charging, pledging, disposing of, or in any manner alienating the suit property herein to wit L.R. No 1160/784.
5. Pending the hearing and determination of this suit, an injunction do issue against the 1st and 3rd Defendants herein either by themselves, their servants, agents, or otherwise howsoever restraining them from entering, trespassing or in any manner interfering with the plaintiff's quiet possession of the suit property to wit L.R. No 1160/784.
6. A mandatory injunction do issue against the 1st and 3rd Defendants compelling them to transfer the money deposited in Savings account No 0151010386299 to Mortgage account NO.

315128151018 at Savings & Loan Kenya Limited Salama House Branch or in the alternative, the 1st defendant be restrained from withdrawing the said monies from the savings account for any other purpose other than for the repayment of the liability outstanding on Mortgage account No. 315125151018 at Savings & Loan Kenya Limited Salama House Branch.

7. That the costs of the application be provided for.

2. A brief background of this matter is that the aforesaid application was initially heard by Njagi J (as he then was). He dismissed the same in a Ruling that was read on his behalf by Ogola J on 19th February 2013. By a Notice of Motion application dated 26th February 2013, the Plaintiff sought to have the said Ruling set aside and the application heard *de novo* on the ground that the Ruling that was delivered on 19th February 2013 was signed after Njagi J (as he then was) had been declared unfit to continue serving as a judge.
3. Vide its Ruling of 20th September 2013, this court set aside the Ruling of the said learned judge on the basis that it was in the interests of justice as sufficient grounds had been established, to set aside the Ruling of 19th February 2013. This was informed by a Report from the Office of Ombudsman of the Judiciary which indicated that the said Ruling had been leaked before the same was read by Ogola J. It is on that basis that this court is now rendering the Ruling herein after the hearing the said application *de novo*.
4. The 3rd Defendant did not file any written submissions or make any oral submissions as its counsel, Mr Marete did ask the court on 23rd September 2014 to be excused from the proceedings herein which application was not objected to by counsel for the Plaintiff and counsel for the 1st and 2nd Defendants and was allowed by the court. The 4th Defendant did not participate in the proceedings herein. All the other parties duly complied with the court's directions.

THE PLAINTIFF'S CASE

5. Rose Mbithe Mulwa, a Director of the Plaintiff company herein, swore Supporting and Supplementary Affidavits on 24th September 2009 and 21st January 2010 respectively. The Plaintiff's written submissions were dated and filed on 20th March 2014.
6. The Plaintiff averred that it entered into an Agreement of Sale with the 1st Defendant in which it was to sell that parcel of land known as L.R. No 1160/784 Karen in Nairobi (hereinafter referred to as "the subject property") for a consideration of Kshs 18,000,000/=. The 1st Defendant was to pay a deposit of Kshs 9,500,000/= upon signing the said Agreement for Sale with the balance of Kshs 8,500,000/= being paid before Completion. The Completion Date was thirty six (36) months from the date of the said Agreement for Sale, time being of essence.
7. The 1st Defendant informed the Plaintiff that she would raise the deposit of the sum of Kshs 9,500,000/= and asked the Plaintiff to transfer to her the subject property to her to enable her secure a loan from Savings & Loans Limited, the 3rd Defendant herein in the sum of Kshs 8,500,000/= being the balance of the purchase price. In the meantime, it was agreed that the 1st Defendant would be depositing money in Savings Account No 015101386299 which she opened and had the sole mandate to operate for purposes of servicing Mortgage Account No 315128151018.
8. When the said sum of Kshs 8,500,000/= was released to M/S Musyoka & Wambua Advocates who were acting for the Plaintiff, it became apparent that the 1st Defendant did not have the said deposit in the sum of Kshs 9,500,000/=. As the 1st Defendant had been unable to complete the sale transaction, the Plaintiff's advocates advised it to retain possession of the subject property to avoid the risk of the same being sold by the 3rd Defendant with whom it had an existing mortgage.
9. Upon receipt, the said sum of Kshs 8,500,000/= was disbursed as follows:-
 - a. **Professional Fees for Musyoka & Wambua Advocates** **Kshs 500,000/=**
 - b. **Peter Nzuki Ndetei** **Kshs 2,800,000/=**
 - c. **Simon Otieno (2nd Defendant)** **Kshs 3,600,000/=**

- d. **Rose Mbithe**
e. **Josephine Akoth Onyango**

Kshs 800,000/=

For alleged financing of servicing of

Loan at her request

Kshs 800,000/=

Kshs 8,500,000/=

10. The Plaintiff stated that the said accounts showed that by 21st January 2009, it had deposited a sum of Kshs 13,570,000/= and contended that the 1st Defendant never made any payments to the said accounts despite its demands that she does so yet the loan at the Savings & Loans continued to attract interest.
11. It was the Plaintiff's case that as the mandate to operate the accounts was solely by the 1st Defendant, it was only fair and in the interest of justice that the monies in the said accounts be applied to repay its loan to prevent the 3rd Defendant disposing of the subject property which would cause it to suffer irreparable loss.

THE 1ST DEFENDANT'S CASE

12. In opposition to the said application, on 20th November 2010 and 24th February 2010, the 1st Defendant swore Replying and Supplementary Affidavits that were filed on 19th November 2010 and 25th November 2010 respectively. Written submissions on behalf of the 1st and 2nd Defendants were dated 10th June 2014 and filed on 12th June 2014.
13. The 1st Defendant admitted the terms of the Agreement for Sale that she had entered into with the Plaintiff for the purchase of the said subject property. She was emphatic that she paid the Plaintiff the deposit in the sum of Kshs 9,500,000/= in cash as the Plaintiff had informed her that she had tax issues. She stated that as the Plaintiff had pressing financial obligations and could not wait for the Completion Date, she was compelled to seek financial accommodation from the 3rd Defendant to pay the balance of Kshs 8,500,000/=.
14. She stated that Angela Nzuki, a daughter to the aforesaid Rose Mbithe Mulwa lodged the Transfer of the subject property which was registered on 22nd March 2005 to enable her secure the said loan. She also contended that she forwarded to the said Angela Nzuki the full amount of the stamp duty and a sum Kshs 400,000/= that was paid to one Samuel Nuthu Kega, who she was introduced to by the said Angela Mulwa, with a view to hastening the registration of the Transfer.
15. She expressed doubt if the Plaintiff would have agreed to transfer to her the subject property if she had not paid the deposit in the sum of Kshs 9,500,000/= or to accept the balance of the sum of Kshs 8,500,000/= that was remitted to the Plaintiff by M/ S Walker Kontos Advocates who processed the mortgage on behalf of the 3rd Defendant in the Charge if the sale transaction was botched.
16. Further, she explained that due to their trust and friendship and because she did not require the property immediately, she allowed the said Rose Mbithe Mulwa to continue staying in the house as a tenant at a monthly rent of Kshs 40,000/=. She said the said Rose Mbithe Mulwa paid her a sum of Kshs 800,000/= which was rent for twenty (20) months, the sum referred to in Paragraph (9) (e) hereinabove.
17. She also pointed out that she had had previous relationships in the real estate business with the said Rose Mbithe Mulwa and that the deposits the latter made to her account and the sum of Kshs 11,930,000/= were her investment returns from proceeds of the Housing Projects and not payments of liability secured by the Charge as had been alleged by the Plaintiff.
18. It was her contention that the said Rose Mbithe Mulwa had approached her sometime in 2008 demanding that she re-sells the subject property to her but she had declined whereupon the Plaintiff filed the suit herein asking for vacant possession of the subject property.
19. She therefore sought the dismissal of the Plaintiff's suit as it had not established a *prima facie* case capable of success at trial or fraud or any allegations complained of. She averred that the

Plaintiff had come to court with dirty hands and that there had been inordinate delay in bringing the application herein bearing in mind that the Plaintiff had alleged that the sale transaction failed in 2005.

THE 2ND DEFENDANT'S CASE

20. On his part, Simon Otieno, the 2nd Defendant herein swore Replying and Supplementary Affidavits on 23rd November 2009 and 24th February 2010 that were filed on 23rd November 2009 and 25th February 2010 respectively.
21. The 2nd Defendant introduced the Plaintiff to the 1st Defendant who wanted to purchase the subject property. He averred that the 1st Defendant paid the deposit in cash and that the Plaintiff voluntarily transferred the subject property to the 1st Defendant after it had received the full amount of the purchase price. He stated that the sum of Kshs 800,000/= that was paid to the 1st Defendant was in respect of rent that she had agreed together with the said Rose Mbithe Mulwa and that the sum of Kshs 8,500,000/= was not paid to the Plaintiff but rather the same was disbursed as shown in Paragraph (9) hereinabove.
22. He also averred that he and the said Rose Mbithe Mulwa were running a real estate business but because they were running out of funds, in 2005, they approached the 1st Defendant who was out of the country to inject monies, something she did over a period of time. However, when the 1st Defendant got wind of the fact that he and the said Rose Mbithe Mulwa had incorporated a company to her exclusion, she demanded for her share of profits. They agreed to pay her off and deposited a sum of Kshs 11,930,000/= in her bank account leaving a balance of Kshs 3,070,000/=.
23. It was his contention that the Plaintiff was attempting to grab the 1st Defendant's property due to the problems that they both had with each other.

THE 3RD DEFENDANT'S CASE

24. On 19th July 2010, James Odwako, the 3rd Defendant's Mortgage Administration Manager swore a Replying Affidavit on behalf of the 3rd Defendant herein. It was filed on even date. The 3rd Defendant relied solely on the said Affidavit in support of its case and never filed written submissions in support of its case.
25. It stated that it was a stranger to the Plaintiff's averments as it advanced a sum of Kshs 8,500,000/= to the 1st Defendant upon being satisfied that she was the registered owner of the subject property. It was categorical that since it had given the 1st Defendant a loan, its rights could not be affected as it was not a party to the Agreement for Sale between the Plaintiff and the 1st Defendant.
26. It also pointed out that since the deposits were said to have been done by the said Rose Mbithe Mulwa to the 1st Defendant's bank account, the Plaintiff could not claim the deposits or direct how the sums could be utilised from the 1st Defendant's account as it was purely and personally serviced by the 1st Defendant. Further, it contended that the 1st Defendant was protected by Banker/Customer privilege and as such it could not comment and/or disclose the transactions in the 1st Defendant's accounts to any third party.
27. For the reasons aforesaid, it stated that it would be oppressive for the court to grant the orders that had been sought by the Plaintiff and prayed that the present application be dismissed for lacking in merit, being hopeless, misconceived in law, an abuse of the court process and/or calculated at frustrating and/or extinguishing its legal and equitable rights and interest over the subject property.

LEGAL ANALYSIS

28. The court noted that pp 2- 9 of the Plaintiff's written submissions contained several facts of the case that were being introduced at the submission stage. The court did not consider the same as they ought to have been presented by way of affidavit evidence so as to be considered at the time

of the determination of the application herein.

29. Having said so, the court did note, as was correctly pointed out by the 1st and 2nd Defendants, that the Plaintiff filed its Supplementary Affidavit on 21st January 2010 without leave of the court. Perusal of the court file does not indicate that the Plaintiff sought to have the same admitted in the court record. For that reason, the court will not consider the said Supplementary Affidavit which is hereby expunged from the court record.
30. On the other hand, although the 1st Defendant's Replying Affidavit was sworn on 20th November 2009 but filed on 19th November 2009, the court will admit the same as was is not clear under what circumstances the same was stamped 19th November 2009. This was because the court was unable to make a conclusive finding as to whether the same was erroneously dated 20th November 2009 and filed on 19th November 2009 or if the same was dated 20th November 2009 and filed on the same date but erroneously stamped 19th November 2009. Suffice to state that the court receipt was dated 20th November 2009 which would ordinarily be the date that documents are stamped.
31. Turning to the substantive issues herein, the Plaintiff identified the following as the issues for determination by the court:-
- Whether there was a valid sale in law between the 1st Defendant and the Plaintiff?**
 - Whether the Plaintiff was entitled to the reliefs sought?**
 - Who should bear the costs of this application.**
32. Although the proceedings in **HCCC No 155 of 2004 Mathew Kyalo Mbobu vs Rose Mbithe Ndeti vs Josephine Akoth Onyango** were not in issue herein, the court could not have failed to take judicial notice that the Plaintiff did obtain a stay of execution in Objection proceedings she had filed therein which were granted on the ground that the 1st Defendant was the registered owner of the subject property. Indeed, documentary evidence that was presented before the court by the parties point to the fact that the subject property was registered in the name of the 1st Defendant. This was therefore not an issue for consideration as it was an agreed fact.
33. Both the Plaintiff and the 1st and 2nd Defendants were agreed that the Plaintiff and the 1st Defendant entered into an Agreement for Sale which each of them was trying to enforce. The Plaintiff had contended that the 1st Defendant did not pay the deposit in the sum of Kshs 9,500,000/= while the 1st Defendant was adamant that she had fulfilled the terms and conditions of the said Agreement for Sale as a result of which title of the subject property was registered in her name.
34. It did therefore appear to the court that there was a valid and binding Agreement for Sale between the said parties. The issue of whether or not there was a breach of the terms and conditions of sale was a different matter altogether and could only be ventilated in a full trial and not on affidavit evidence.
35. However, circumstances surrounding how the 1st Defendant came to be registered as the proprietor of the subject property were the key to answering issues (a) and (b) hereinabove which issues will be dealt together as they were closely related. The Plaintiff seemed to suggest that the failure by the 1st Defendant to pay a deposit in the sum of Kshs 9,500,000/= would not have created a valid sale in law. It expressed doubt that a purchaser could pay a sum of Kshs 9,500,000/= without demanding a receipt evidencing payment and dismissed the explanation that there existed friendship and trust between itself and the 1st Defendant.
36. It was its argument that the failure by the 1st Defendant to deposit the said sum of Kshs 9,500,000/= was a weighty legal issue that could affect the legality and subsequent transfer of the said subject property. It argued that it had made substantial payments to the Savings & Loans Mortgages accounts held by the 1st Defendant which amount continued to accrue interest. It was its contention that if there was any damage to be suffered by the Defendants, then same could be compensated by way of damages.
37. It referred the court to the cases of **Giella v Cassman Brown & Co Limited (1973) EA 360, Mrao vs First American Bank of Kenya Limited & 2 Others (2003) KLR 125, Muiruri vs Bank of Baroda (Kenya) Ltd 92001) 1KLR 183** and **Farmers Partner Limited & 2 Others vs Barclays Bank of Kenya Limited [2009] eKLR** to buttress its argument that it was entitled to injunctive orders herein.

38. On the other hand, the 1st and 2nd Defendants submitted that the Plaintiff had unequivocally admitted to having received the sum of Kshs 8,500,000/=. However, in its written submissions, the Plaintiff did in fact expressly deny that the 1st Defendant had paid a single coin of the purchase price in the sum of Kshs 18,000,000/=. Perusal of the documentation presented before the court and the Plaintiff's own admission seemed to suggest otherwise.

39. In its letter dated 9th March 2005 to M/S Walker Kontos Advocates marked as Exhibit "JAO 5" on pg 28 of the 1st Defendant's Replying Affidavit, which the court found it fit to reproduce herein, the Plaintiff stated as follows:-

"Take note in regard to the above matter, we have duly appointed Messrs. Musyoka and Wambua Advocates, Rehani House, 9th Floor for the purpose of:

- a. **Forwarding to yourselves the relevant completion documents in respect of this matter and**
- b. **Receiving the balance of the purchase price of the above property (Kshs. Eight Million Five Hundred Thousand Only) being a mortgage facility from Savings and Loan Kenya Ltd, Salama House Branch, Nairobi.**

In this regard kindly give the appropriate professional undertaking to pay to them this sum as soon as the charge is registered against Savings & Loan Kenya Ltd."

40. In Paragraph 11 of its Supporting Affidavit, the Plaintiff admitted having received the sum of Kshs 8,500,000/= and demonstrated how the same was disbursed, details which were set out in Paragraph (9) hereinabove. The court was not persuaded by the Plaintiff's submission that it never received a single coin from the 1st Defendant because the Plaintiff had indeed been paid the sum of Kshs 8,500,000/= by the 1st Defendant.

41. Having found that the Plaintiff had been paid the sum of Kshs 8,500,000/=: the question that arose was whether the said sum was the balance of the purchase price or part payment of the purchase price as had been contended by the 1st and 2nd Defendants and the Plaintiff respectively.

42. From the documentation that was presented herein, the court found the following issues to have been pertinent. They raised more questions than answers. The list is by no means exhaustive. These were:-

- a. **In the letter of 9th March 2005, the Plaintiff was categorical that the sum of Kshs 8,500,000/= was the balance of the purchase price leading the court to find, in the absence of any evidence to the contrary, that the said sum was indeed the balance of the purchase price. In the said letter, the Plaintiff had indicated that its advocates would forward the Completion Documents which were indeed forwarded and title registered in the name of the 1st Defendant as well as the registration of the Charge upon receipt of the sum of 8,500,000/=:**
- b. **While the Agreement for Sale was dated 24th December 2002, the purchase price was paid in 2005, which was almost three (3) years after the execution of the said Agreement leading the court to question why if the sum of Kshs 9,500,000/= had not been paid, the Plaintiff did not annex any documents calling for the said sum as the same was to be paid upon signing the Agreement.**
- c. **There was no evidence of rescission of the Agreement for Sale or Notice of Completion from the Plaintiff to the 1st Defendant that was annexed when the latter failed to pay the deposit of Kshs 9,500,000/=: The said Agreement for Sale was subject to the Law Society Conditions of Sale that provided for the issuance of such a notice. Indeed, the first letter alluding to the fact that the 1st Defendant had failed to complete the transaction was dated 30th April 2005 Exhibit marked "RMM 3" annexed in its Supporting Affidavit after the 1st Defendant had paid the sum of Kshs. 8,500,000/=:**
- d. **It was incomprehensible why if the 1st Defendant had not paid the sum of Kshs 9,500,000/=: the Plaintiff nonetheless instructed its advocates to disburse a sum of**

- Kshs 800,000/= to the 1st Defendant. Indeed, the Plaintiff did not give a plausible explanation or cogent reason why it paid the sum of Kshs 800,000/= to the 1st Defendant or why monies were disbursed to M/S Musyoka & Wambua Advocates, Peter Nzuki Ndeti, the 2nd Defendant and herself when the sum of Kshs 8,500,000/=, which was said to have been the balance of the purchase price, was paid.
- e. There was no explanation that was advanced by the Plaintiff to demonstrate why the 1st Defendant had serviced the loan on her request as was contended in Paragraph 11(v) of its Supporting Affidavit.
 - f. The Plaintiff did not rebut the 1st Defendant's evidence that it was paid a sum of Kshs 9,500,000/= as was evidenced in Paragraph 4 of the 1st Defendant's Replying Affidavit or deny that the signatures in the acknowledgment notes Exhibits marked "JAO 1", "JAO 2" and "JAO 3" belonged to Rose Mbithe Mulwa.
 - g. There was doubt in the mind of the court regarding the monies the Plaintiff is said to have deposited in the 1st Defendant's account at Savings & Loans Kenya Limited as there was evidence of other transactions between the said Rose Mbithe Mulwa, the 1st and 2nd Defendants herein as was evidenced in Exhibits marked "SOS 1"- "SOS 7" annexed to the 2nd Defendant's Supplementary Affidavit wherein injunctive orders were issued restraining the said Rose Mbithe Mulwa and the 2nd Defendant from interfering with a parcel of land known as L.R. No 7793/39.
43. Demonstration of a *prima facie* connotes a situation where on the face of a matter, the success of a party appears probable at trial. Facts presented by an applicant must never raise any doubt in the mind of the court at this interlocutory stage. The court requires tangible evidence when considering an application for interlocutory injunction pending the hearing and determination of the suit.
44. As this court held in the case of **Cyn Energy Company Limited vs Synergy Industrial Credit Limited (2014) eKLR**, it is therefore incumbent upon an applicant to submit a cogent case during the interlocutory stage to show that it has an arguable case. This is important because at this juncture, the court would not have had an opportunity to listen to the evidence in support of each party's case. This is a burden that lies on the applicant.
45. Accordingly, having considered the pleadings by the parties, the affidavit evidence, written and oral submissions and the case law in respect of the parties' case, the court found that the Plaintiff failed to demonstrate that it had established a *prima facie* case with a probability of success or that if the injunctive orders were not granted, damages would not be an adequate remedy. The court found itself in agreement with the 1st and 2nd Defendants that if the sum of Kshs 9,500,000/= was not paid to the Plaintiff, then its remedy lay in damages. The court did in fact find that in the event the Plaintiff was successful after the trial, it would adequately be compensated by an award of damages.
46. The subject property was duly registered in the name of the 1st Defendant and until the same was reversed, the court could not grant orders to restrain a party who was the duly registered owner of a parcel of land from accessing or dealing with property that belonged to it. It was thus the finding of the court that the balance of convenience tilted in favour of the 1st Defendant herein.
47. The court was also persuaded by the 3rd Defendant's position that any injunctive orders issued herein would only serve to defeat and/or extinguish its legal and equitable rights and interests over the subject property in its capacity as a Chargee. As it was not privy to the Agreement between the Plaintiff and the 1st Defendant, the 3rd Defendant could not be dragged into any dispute between the Plaintiff and the 1st and 2nd Defendants as the Charge was created in accordance with the laid down procedure.
48. The court did not also find any evidence of fraud or misrepresentation on the part of the 1st, 2nd or 3rd Defendants as was alleged by the Plaintiff. In this regard, the court could not depart from the holdings of the several cases that were relied upon by the 1st and 2nd Defendants that an allegation of fraud was a serious accusation which required a high standard of proof- See **Richard Akwesera Onditi vs Kenya Commercial Finance Company Limited [2010] eKLR**, **Mpungu and Sons Transporters Limited vs Attorney General & Another [2006] 1 EA** and **Civil**

Appeal No 21 of 1980 Gudka vs Dodhia (unreported).

49. In addition, the court was also not satisfied that the Plaintiff had advanced sufficient reasons for this court to grant it a mandatory injunction as it had sought. Such an injunction can only be granted if an applicant has been able to satisfy the conditions that are set out in the case of **Giella v Cassman Brown & Co Limited** (Supra) which the court found the Plaintiff had not done.
50. As was held in the celebrated case of the case of **Locabail International Finance Limited vs Agro-Export & Another** [1986] 1 All ER, mandatory injunction can only be granted in clear and special circumstances, which was not the position herein. In the said case, the court held as follows:-

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could easily be remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory injunction the court had to feel a high sense of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

51. Last but not least, the court was disinclined to grant the Plaintiff the equitable orders that it had sought as it was guilty of non-disclosure of material facts. Despite denying that it was paid a sum of Kshs 9,500,000/=, evidence was adduced that demonstrated that in fact the said Rose Mbithe Mulwa did receive the said monies. The Plaintiff was also guilty of inordinate delay in bringing its arguments about the non-payment of the said deposit. As it is trite law that he who seeks equity must do equity and/or come to court with clean hands and that equity does not aid an indolent party, the Plaintiff failed to persuade this court that it was deserving of the equitable relief it had sought herein.
52. As can be seen hereinabove, there were too many lingering and unanswered questions which led the court to entertain doubt whether there was a probability of the Plaintiff succeeding at the trial thus making it difficult for the Plaintiff to succeed in being granted the orders it had sought at this interlocutory stage.

DISPOSITION

53. For the foregoing reasons, the upshot of this court's ruling was that the Plaintiff's Chamber Summons application dated 24th September 2009 and filed on 25th September 2009 was not merited and the same is dismissed with costs to the 1st, 2nd and 3rd Defendants.
54. It is so ordered.

DATED and DELIVERED at NAIROBI this 22nd day of January, 2015

J. KAMAU

JUDGE