



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & ADMIRALTY DIVISION**

**CIVIL CASE NO 131 OF 2015**

**ANITA CHELEAGAT O'DONOVAN.....1<sup>ST</sup> PLAINTIFF**

**ESTATE OF TERRENCE PETER O'DONOVAN.....2<sup>ND</sup> PLAINTIFF**

**ESTATE OF JOYCE JEROTICH O'DONOVAN.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**FREDRICK KWAME KUMAH.....1<sup>ST</sup> DEFENDANT**

**ZIPPORAH WAIRIMU WANJOHI.....2<sup>ND</sup> DEFENDANT**

**NATIONAL BANK OF KENYA LIMITED.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. For determination by the Court was the Plaintiffs'/Applicants' application dated 18<sup>th</sup> March 2015 and filed on 19<sup>th</sup> March 2015. The application was brought pursuant to the provisions of Order 40 Rules 1(a), 2, 4 & 10 and Order 51 Rule 1 of the Civil Procedure Rules and the Land Act No. 6 of 2012. The Applicants sought the following orders *inter alia*;

1. *Spent*
2. **THAT pending the inter-partes hearing and determination of this application, an order of injunction do issue, restraining the 3<sup>rd</sup> Defendant whether by themselves, their agents, employees or otherwise howsoever, from selling or advertising for sale by way of private treaty or by public auction the properties comprised in L.R Nairobi/Block 90/143 Loresho South, L.R Nairobi/Block 209/11315 and L.R Nairobi/Block 209/11316 or interfering in any way whatsoever with the Plaintiffs'/Applicants' quiet enjoyment thereof.**
3. **THAT pending hearing and determination of this suit filed herein, an order of injunction do issue, restraining the 3<sup>rd</sup> Defendant whether by themselves, their agents, employees or otherwise howsoever, from selling or advertising for sale by way of private treaty or by public auction the properties comprised in L.R Nairobi/Block 90/143 Loresho South, L.R Nairobi/Block 209/11315 and L.R Nairobi/Block 209/11316 or interfering in any way whatsoever with the Plaintiffs'/Applicants' quiet enjoyment thereof.**
4. **THAT pending the inter-partes hearing and determination of this application, an order of injunction do issue, restraining the Defendants jointly and severally whether by themselves, their agents, employees or otherwise howsoever, from selling or advertising for sale by way of**

- private treaty or by public auction the properties comprised in L.R Nairobi/Block 90/143 Loresho South, Lor from entering, attempting entry thereinto, purporting to levy distress thereon and/or interfering with or damaging any structures thereon or interfering in any way whatsoever with the Plaintiffs'/Applicants' quiet enjoyment thereof.
5. THAT pending the hearing and determination of the Plaintiffs'/Applicants' suit, an order of injunction do issue, restraining the Defendants jointly and severally whether by themselves, their agents, employees or otherwise howsoever, from selling or advertising for sale by way of private treaty or by public auction the properties comprised in L.R Nairobi/Block 90/143 Loresho South, Lor from entering, attempting entry thereinto, purporting to levy distress thereon and/or interfering with or damaging any structures thereon or interfering in any way whatsoever with the Plaintiffs'/Applicants' quiet enjoyment thereof.
  6. THAT pending the hearing and determination of this application an order of injunction to issue, preventing any dealings with the titles of the properties comprised in L.R Nairobi/Block 90/143 Loresho South, L.R Nairobi/Block 209/11315 and L.R Nairobi/Block 209/11316.
  7. THAT pending the hearing and determination of the Plaintiffs'/Applicants' suit, an order of injunction do issue, preventing any dealings with the titles of the properties comprised in L.R Nairobi/Block 90/143 Loresho South, L.R Nairobi/Block 209/11315 and L.R Nairobi/Block 209/11316.
  8. THAT an order of injunction do issue directed at the 3<sup>rd</sup> Defendant/Respondent to provide to the Plaintiffs/Applicants with the following information;
    - a. A statement of account in respect of the account (s) secured by the charges registered against the titles to the properties comprised in L.R Nairobi/Block 90/143 Loresho South, L.R Nairobi/Block 209/11315 and L.R Nairobi/Block 209/11316 and held by the said Defendant.
    - b. Any and all notices notifying the chargors of the properties comprised in L.R Nairobi/Block 90/143 Loresho South, L.R Nairobi/Block 209/11315 and L.R Nairobi/Block 209/11316 of fluctuations in the subject accounts and were applicable the rates of interest and changes thereto if at all.
    - c. Any proof that it has sought leave from the High Court in respect of its interest in the properties comprised in L.R Nairobi/Block 90/143 Loresho South, L.R Nairobi/Block 209/11315 and L.R Nairobi/Block 209/11316.
    - d. Any and all notices issued to the aforesaid chargors including their personal representatives and successors pursuant to the very elaborate provisions of the Land Act 2012.

**AND leave be granted to the Plaintiffs/Applicants to amend this application and the Complaint filed herein as appropriate upon perusal of the said information.**

9. THAT an order of injunction do issue directed at the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents to provide to the Plaintiffs/Applicants with the following information;
  - a. Evidence of the process pursuant to which they purportedly acquired an interest in the property comprised in L.R Nairobi/Block 90/143 Loresho South.
  - b. Evidence of any lawful order or authority warranting their attempted forced entry into the property comprised in L.R Nairobi/Block 90/143 Loresho South.

**AND leave be granted to the Plaintiffs/Applicants to amend this application and the Complaint filed herein as appropriate upon perusal of the said information.**

10. THAT the Plaintiffs/Applicants be granted leave to serve this application upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/Defendants by way of substituted service.
11. THAT the Officer in Charge of Loresho Police Post do ensure the obedience of the orders granted herein.
12. THAT this honourable Court be pleased to make such order as it deems meet and just.

2. The grounds set in support of the application were that the suit property was vested in the 2<sup>nd</sup> and

- 3<sup>rd</sup> Plaintiffs as the administrators of the estate of the deceased 1<sup>st</sup> Plaintiff, and that they therefore exercised all the rights and lawful occupation of the suit property. Further, it was stated that the claim by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants over ownership of the suit property was an issue/dispute that was pending determination in the Court of Appeal in **Civil Application No Nairobi 45 of 2014**, and that the same touches on the impugned interests of the 3<sup>rd</sup> Defendant over the suit property. It was averred that the claims by the Defendants over the suit property was unlawful and unconstitutional, and that the Plaintiffs would stand to suffer irredeemable harm if the orders as prayed for were not granted by this Court.
3. In further support of the application, the Plaintiffs filed the affidavit and further affidavit of Anita Chelagat O'Donovan sworn on 18<sup>th</sup> March 2015 and 24<sup>th</sup> April 2015 respectively. Therein, it was deposed to that the Plaintiffs were unaware of any disposition of the suit property, that the 3<sup>rd</sup> Defendant had failed and or neglected to explain to the Plaintiffs its dealings over the said suit property and that, further, there was a dispute pending in the Court of Appeal between the 3<sup>rd</sup> Defendant and the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs over the former's impugned interests in the suit property. It was further deposed to that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have unlawfully, unprocedurally and forcefully attempted to evict the 1<sup>st</sup> Plaintiff from the suit property, and further, that they have caused extensive damage to the suit property. Further, it was averred that the issue in dispute in **Civil Case No 333 of 2008** were different from those in the instant suit, and that therefore, were not a bar to the filing of the instant suit.
  4. In its submissions dated and filed on 4<sup>th</sup> June 2015, the Plaintiffs relied upon the cases of **Giella v Cassman Brown & Co Ltd (1973) E.A 358**, **Mrao v First American Bank of Kenya Limited & 2 Others (2003) KLR 125** and **American Cyanamid v Ethicon Limited (1975) AC** in support of their contention that they had established a *prima facie* case, which raise questions as to the probity of the process of the purported exercise of statutory power of sale. Further, it was submitted that the 1<sup>st</sup> Plaintiff had *locus standi* to institute the instant matter with regards to the provisions of Section 79, as read together with Section 82(a) of the Law of Succession Act. It was further submitted that there had been flagrant breach of the orders for stay issued by the Court in **Civil Case No 333 of 2008** pending the intended appeal, and that the 3<sup>rd</sup> Defendant therefore, had blatantly breached an order of the Court in purported exercise of its statutory power of sale. It was contended that there were glaring irregularities in the purported exercise of the statutory power of sale, that the period given for the issuance of notices under Section 96(2) of the Land Act had not lapsed and that therefore, the purported sale was carried out in contravention of the law. In relying on the case of **Joseph SiroMisioma v Housing Finance Company of Kenya & Others (2008) eKLR**, it was contended that the balance of convenience tilted in favour of the Plaintiffs, and that therefore, the instant application should be allowed to prevent irredeemable and irreparable loss being occasioned upon the Plaintiffs.
  5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their replying affidavit sworn on 23<sup>rd</sup> March 2015. In response to the allegations averred to by the 1<sup>st</sup> Plaintiff, they reiterated that they were bonafide purchasers and owners of the suit premises, which purchase was commenced by a sale agreement between themselves and the 3<sup>rd</sup> Defendant dated 26<sup>th</sup> May 2014, and which transaction was completed on or about October 2014, with the suit property being duly registered in their names. Further, it was averred that as the lawful registered owners of the suit property, they were entitled to vacant and undisturbed possession thereof, and that further, they were entitled to use reasonable force in the enforcement of their rights as aforementioned. It was deposed to that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have no knowledge of any dispute between the Plaintiffs and the 3<sup>rd</sup> Defendant, or of any of the other properties in L.R Nairobi/Block 11315 and L.R Nairobi/Block 11316 and that, in the absence of any evidence to the contrary, the transaction was conducted within the strictures of the law and that therefore, the Plaintiffs were not entitled to the remedies sought.
  6. In their submissions dated 22<sup>nd</sup> July 2015, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that the 1<sup>st</sup> Plaintiff had no locus standi to institute or maintain any suit, and that the letters of administration *ad colligenda bona* was restricted to the preserve the estate pending a full grant. It was further submitted that it was a requirement of the 1<sup>st</sup> Plaintiff to have obtained letters of administration *ad litem* as provided under the Law of Succession, and that in the absence of such locus, and as

- determined in the case of **In the Matter of the Estate of Hussein Dungarwall (Deceased) (2012) eKLR**, no suit can be sustained by the 1<sup>st</sup> Plaintiff. It was also submitted that the 1<sup>st</sup> Plaintiff had not established a prima facie case as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, and that further in seeking to restrain the 3<sup>rd</sup> Defendant from selling the suit property, the same had been overtaken by events and that such orders could not be effected by the Court. Further, it was reiterated that once title had been registered in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the title was indefeasible, save for the provisions of Section 26(1) of the Land Registration Act, as read together with Section 99 thereof, on the infractions of fraud and/or misrepresentations have not been proved or established against the 1<sup>st</sup> and 2<sup>nd</sup> Defendant as bona fide purchasers of the suit property. In this contention, the cases of **Joseph N.K ArapNg'ok v Mojoy Ole Keiwua & 4 Others (1997) eKLR**, **Micheal H.K Lang'at v Muigai Commercial Agencies Ltd & 3 Others (2014) eKLR** and **Kalya Soi Farmers Cooperative Society v Paul Kirui & Another (2003) eKLR** were relied upon.
7. In reiterating that the remedy available to the 1<sup>st</sup> Plaintiff, in consideration of the right of an innocent purchaser, was damages against the chargee or 3<sup>rd</sup> Defendant, the case of **Kaplana Shashikant Jai & Another v EcoBank Kenya Ltd & Another (2015) eKLR** was relied upon, as were the cases of **David Katana Ngomba v Shafi Grewal Kaka (2014) eKLR**, **Samuel Ndiba Kihara & Another v Housing Finance Company of Kenya Limited & 2 Others (2006) eKLR**, **John Bundi Magiri v Co-operative Bank of Kenya (2008) eKLR**, **Peter Kipyegen v Elijah Kipng'eno Arap Bii (2005) eKLR** and **Edward Gatiba Mbogua v Barclays Bank (K) Limited (2012) eKLR** where it had established that once a sale had taken place, and where there was presumed to have been prejudice occasioned by the unauthorized, irregular or improper exercise of the power of sale, then the remedy would be in damages against the person (or institution) exercising that power.
  8. The 3<sup>rd</sup> Defendant filed its affidavit sworn on 16<sup>th</sup> April 2015. It was contended that the application was frivolous, vexatious and abuse of the process of the Court. Further, it was deposed to that the matters raised in the instant suit and application were *res judicata*, and that the same had been the subject of an appeal from the decision and determination of Mwera, J in **Civil Case No 333 of 2008**, and that therefore, the instant matter was an attempt by the Plaintiffs to re-open the case at the superior Court. It was further deposed to that the sale of the suit property was procedural and legal, that all due notices and procedures had been complied to, and that the realization of the suit property by the 3<sup>rd</sup> Defendant was in exercise of its statutory power of sale.
  9. The 3<sup>rd</sup> Defendant filed its submissions with regards to the issues raised on 17<sup>th</sup> July 2015. It was submitted that the threshold for the grant of the orders sought by the Plaintiffs had not been met as enunciated in the case of **Giella v Cassman Brown & Co Ltd** (supra), and that in any event, the Plaintiffs had not shown that they were deserving of the orders. Further, it was submitted that the matter presently before the Court had been litigated in **Civil Case No 333 of 2008**, and that the Plaintiffs were trying to re-institute the matter which was pending hearing and determination before the Court of Appeal. Further, it was submitted that the matter was *res judicata*, that injunctive orders would not issue when the debt owed is admitted, and in any event, any dispute as to the amounts owed was not a basis for an injunctive relief. For this contentions, the 3<sup>rd</sup> Defendant relied on the cases of **Jopa Villas LLC v Overseas Private Investment Corporation & 2 Others (2014) eKLR** and **David Kamau Gakuru v National Industrial Credit Bank Ltd** (citation not given). It was also submitted that once property had been given as security, the same became subject to sale in the event that the borrower or chargor defaulted in making repayments. This was as enunciated in **HCCC No 82 of 2005 Matex Commercial Supplies Limited & Another v Euro Bank Limited (In Liquidation)** and **St Ann's Limited v Planfarm Limited & Another Civil Appeal No 79 of 2009 as cited in Shimmers Plaza Limited v National Bank of Kenya Ltd (2013) eKLR; Civil Application No 38 of 2013**.
  10. In determining the issue for before this Court, the Court has considered the application, the affidavits in support and in reply to the application and the submissions made by the respective parties. The issue for determination is whether the Applicants have met the threshold for injunctive reliefs in their application. In considering an application for injunction brought under the ambit of Order 40 of the Civil Procedure Rules, the Court is guided by the oft cited cases of **Giella v Cassman Brown & Co Ltd** (supra) as well as **Mrao v Frist American Bank of Kenya Ltd** (supra). It has been stated that for such an application to succeed, the applicant has to

establish a prima facie case with a probability of success and that they stand to suffer irreparable loss that may not be adequately compensated for an award in damages. It is further encumbered upon the applicant to show that balance of convenience would be in their favour should the said order be issued.

11. In **Giella v Cassman Brown & Co Ltd** (supra), it was reiterated that;

***“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award for damages. Thirdly, if the Court is in doubt, it will decide an application on a balance of convenience.”***

In **Mrao Ltd v First American Bank of Kenya Ltd** (supra), it was enunciated that a prima facie case is more than an arguable case, and that the Applicant has to show that some right has been infringed upon and that it is not sufficient just to raise issues, but raise issues with the probability of success. It has been held that;

***“But as I earlier endeavoured to show, and I cited ample authority for it, a prima facie case is more than an arguable case. It is not sufficient to raise issues. The evidence must show that an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”***

12. In seeking to establish a prima facie case, the Applicants contended that the sale of the suit property had been marred with irregularities and blatant disregard of procedures for sale as provided under the law. Further, it was the Applicants contention that the suit property was the matrimonial and family home of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants, who are now deceased, and the 1<sup>st</sup> Applicant respectively, and that they therefore stand to suffer irreparable loss.

13. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants contended that they were bona fide purchasers of the suit property, and they were unaware of any dispute with regards to the same between the Plaintiffs and the 3<sup>rd</sup> Defendant. The Plaintiffs contend that the purchase was fraught with irregularities and wanton disregard of procedures, although the same has not been strictly established. It was contended that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had attempted to forcefully evict the 1<sup>st</sup> Plaintiff from the suit premises without any authority or order empowering them as such, and that they were the legal occupants of the suit property as administrator of the estate of the deceased 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs.

14. However, the 1<sup>st</sup> Plaintiff has not proffered any evidence before the Court to establish her legal rights over the suit premises, save for the limited grant of letters of administration *ad colligenda bona* dated 29<sup>th</sup> May 2014. Conversely, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have presented before the Court the title registered in their respective names, and therefore, and in accordance with the provisions of Section 26(1) of the Land Registration Act, are by law, considered the registered owners of the suit property. The said provision reads;

***The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—***

***a. on the ground of fraud or misrepresentation to which the person is proved to be a party;  
or***

***b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.***

15. In **Michael H. K Lang’at v Muigai Commercial Agencies Ltd & 3 Others** (supra) it was reiterated that;

***“Firstly, I find that the Plaintiff has not established a prima facie case for the reason that he is no longer registered as the owner of the suit property, which is now registered in the name of the 1<sup>st</sup> Defendant who produced evidence of its title to the same. The Plaintiff therefore has no current right or interest in the suit property capable of being protected or preserved.”***

The suit property having already been transferred and registered in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, title would only be defeasible if it is established that title to the same had been acquired by either fraud or illegally, unprocedurally or through a corrupt scheme. The 1<sup>st</sup> Plaintiff has not established any of these infractions had been committed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the acquisition of the suit property, and thus any claim against their title would be bound to fail.

16. The 1<sup>st</sup> Plaintiff has been unable to establish a *prima facie* case against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. However, as against the 3<sup>rd</sup> Defendant, it was averred that the sale of the suit property had been conducted in a manner bereft of procedure, and that there was blatant disregard of Court orders issued for the maintaining of the *status quo* pending the filing of an appeal. The *status quo* was to last for a period of thirty (30) days from 5<sup>th</sup> June 2014. As at of that date, the 3<sup>rd</sup> Defendant had already entered into an agreement with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for the sale of the property. At the lapse of this period, the sale process was effected, with the transaction terminating sometime in October 2014. The suit property was transferred to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and subsequently registered in their names. In **Kaplan Shashikant Jai & Another v Eco Bank Kenya Ltd & Another** (supra) Gikonyo, J commentary with regards to Section 99 of the Land Act was as follows;

***“The law as it stands is that only fraud, misrepresentation or other dishonest conduct on the part of the chargee, of which the purchaser had actual or constructive knowledge will impeach a sale to a purchaser for value of the charged property. Similarly, I should think that, for an injunction to issue against such purchaser, a prima facie case must be made out based on one or more of the elements in Section 99, to wit, fraud, misrepresentation or other dishonest conduct on the part of the chargee, of which the purchaser had actual or constructive knowledge.”***

17. The 1<sup>st</sup> Plaintiff has however, neither shown that the sale was concluded during the subsistence of the Court order for maintaining the *status quo* nor that the title was acquired by fraud or misrepresentation or other dishonest conduct of which the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had actual or constructive knowledge thereof. As at 5<sup>th</sup> June 2014, sale procedure had already been effected, with the requisite notices having been issued to the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs. There was no objection to the issuing of the notices, and such was as held in **Civil Case No 333 of 2008**. In the instant application, however, the 1<sup>st</sup> Plaintiff claims that proper notices had not been issued, and that therefore the entire sale had been conducted contrary to the provisions of the law. However, Section 90(1) of the Land Act, as read together with Sections 96(1) and 98 thereof were complied with by the 3<sup>rd</sup> Defendant as had been evidenced before the Court. The 1<sup>st</sup> Plaintiff has not been able to establish that the said provisions were contravened, and that therefore the sale of the suit property was illegal and unprocedural, which was, further, the holding of the Court in **Civil Case No 333 of 2008**.
18. The 1<sup>st</sup> Plaintiff has, in consideration of the foregoing, failed to establish a *prima facie* case against the Defendants. Further, she has failed to show that she stands to suffer irreparable loss that may not be adequately compensated for an award in damage. In contending that the suit property was both matrimonial and family property, the Court of Appeal in dismissing an injunction application in **Joseph Gitahi Gachau & Another v Pioneer Holdings (A) Ltd & 2 Others (200) eKLR** held that;

***“However, we recognize the argument put forward by the applicants that the suit property is a matrimonial home in which they occupy in their now sunset years. But we would like***

*to point out that couples such as the one now before us must realise that when they charge their matrimonial property to secure a loan, they are in fact converting that property into a commodity for sale available for purchase by all and sundry, if they fail to pay the charge debts or the loans and that no sentimental value or attachment to the mortgaged property, however great, per se, would operate against the exercise of statutory power of sale by the mortgagee.”*

In **Matex Commercial Supplies Ltd & Another v Euro Bank Limited (In Liquidation)** (supra), it had been held that;

*“In my view any property whether it is matrimonial home or spiritual house, which is offered as a security for loan/overdraft is made on the understanding that the same stands the risk of being sold by the lender if default is made on the payment of the debt secured. This court is concerned with the importance and the comfort such a home generates but once a party feels that the property is suitable for purposes of a security, it means the party has destroyed, defaced and/or degraded the sanctity and rituality of the said matrimonial home.”*

19. Further, it has been established that the property has already been sold, transferred and registered in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. To issue orders for injunction would be after the matter has been overtaken by events. Orders may not be made which cannot be enforced or which may be ineffective for practical purposes. This was the position reiterated in **KalyaSoi Farmers Cooperative Society v Paul Kirui& Another** (supra), it was held *inter alia*;

*As is said, “Equity, like nature, will do nothing in vain.” On the basis of this maxim, Courts have held again and again that it cannot stultify itself by making orders which cannot be enforced or grant an injunction which will be ineffective for practical purposes. If it will be impossible to comply with the injunction sought, the Court will decline to grant it.”*

20. In the circumstances, and in consideration of the foregoing, the Applicants have not established a prima facie case with the probability of success, and neither have they been able to show that they would stand to suffer irreparable loss that may not be adequately compensated for an award in damages. Further, any balance of convenience, if any, would tilt in favour of the Defendants. More so, the suit property subject of the injunction application has been transferred and registered in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, and therefore reliefs, if any, would be in accordance with the provisions of Section 99 of the Land Act, more particularly sub-section (4) thereof. As has been said hereinabove, orders may not be issued if the same would not be enforced or will be ineffective for practical purposes as the same would merely be an academic exercise. For these reasons therefore, the application by the Plaintiffs is unmeritorious, and the same is dismissed with costs.

**Dated, signed and delivered in court at Nairobi this 21<sup>st</sup> day of October, 2015.**

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**C. KARIUKI**

**JUDGE**