



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ENVIRONMENT AND LAND COURT CASE NO. 117 OF 2015

JBO PLAINTIFF

VERSUS

GOC DEFENDANT

RULING

1. Before me for determination is the plaintiff's Notice of Motion dated 25th March 2015, where she seeks the following principal prayer:

“That pending the interpartes hearing hereof, an order of inhibition do issue inhibiting registration of dispositions whether by way of subdivision and transfer, charge, pledge, lease or otherwise, respecting land title Nyaribari [Particulars Withheld] pending inter partes hearing hereof.

The application is supported on the grounds that appear on the face of the application and the supporting affidavit and the supplementary affidavit sworn by the plaintiff in support of the application. The defendant in opposition to the application has sworn a replying affidavit.

2. The plaintiff by a plaint dated 26th March 2015 but filed simultaneously with the application on 30th March 2015 prays for judgment against the defendant for interalia:-
 - i. **A declaration that the defendant holds land title number Nyaribari [Particulars Withheld] as trustee in favour of the plaintiff.**
 - ii. **Cancellation of the title issued to the defendant and issue of the title in favour of the plaintiff.**
 - iii. **An order of eviction against the defendant from the parcel fo land.**

The plaintiff has set out in considerable detail the facts and circumstances that she states gave rise to the instant suit in the supporting affidavit sworn on 31st January 2015 and the supplementary affidavit sworn on 15th July 2015 in response to the defendant's replying affidavit sworn on 13th May 2015 in opposition to the plaintiff's application. The brief facts in this matter are that the plaintiff states she was a business woman engaged in the business of running a wines and spirits shop in the premises known as [Particulars Withheld] in Kisii Town and that around 2008 the defendant was a trainee cellphone repairer in adjacent premises at a business ran under the name “[Particulars Withheld]”. The plaintiff states that she and the defendant developed a close and intimate relationship that progressively culminated in the two moving in together and started living as “husband and “wife” albeit not being officially married. It is the plaintiff's case that she

and the defendant started doing things together to the extent that the plaintiff assisted the defendant to set up his own cellphone repair business. The plaintiff purchased the necessary tools for the defendant and allowed him to carry on cellphone repair business within her business premises at the wines and spirits shop.

3. The plaintiff claims she acquired loans from Kenya Women Finance Trust (KWFT) and from several merry-go-round chamas where she was a member to expand her wines and spirits shop at [Particulars Withheld] and to open a second wines and spirits shop at the main matatu terminus in Kisii town and since it was not possible to physically run the two shops at the same time the plaintiff states she and the defendant agreed that the defendant would run the shop at [Particulars Withheld] and she would run the new outlet at the matatu terminus. At the same time the plaintiff states she and the defendant agreed they should look for a suitable piece of land to buy to put up their home.
4. The plaintiff states that they identified a parcel of land being [Particulars Withheld] for purchase at the cost of kshs. 400,000/= and that she availed the funds for the purchase through her savings of kshs. 130,000/= and a loan from her self help group, [Particulars Withheld] Self Help Group of kshs. 250,000/= leaving a balance of kshs. 20,000/= which was to be paid to the vendor on transfer of the plot. The plaintiff avers that owing to the relationship she had with the defendant and their business engagements which made it impractical for both of them to be away at the same time it was agreed between them that the defendant's name be solely used in the agreement for sale and the consequent transfer be processed in the defendant's name as she totally trusted the defendant. A sale agreement dated 24th April, 2014 was drawn and is exhibited as annexure "**JB-07**". The plaintiff further avers that she and her "**husband**" the defendant herein purchased what had remained of the vendor's suit property being a portion measuring **17feet** by **70feet** at the consideration of kshs. 50,000/= as per the agreement annexed and marked "**JB-08**" dated 21st May 2010. The plaintiff states she financed this purchase from a loan granted by KWFT and annexes copy of her pass book marked "**JB-09**" to illustrate the fact.
5. The plaintiff asserts that after the property was transferred in the defendant's name she obtained loan funds in the sum of kshs. 150,000/= from [Particulars Withheld] Self Help Group and a further kshs. 150,000/= from KWFT for purposes of purchasing building materials on the suit premises and ultimately deposited building materials at the site of approximately kshs. 700,000/=.
6. The plaintiff depones that the defendant refused to let her participate in the running of their business at [Particulars Withheld] Plaza after the plaintiff lost her business premises at the matatu terminus following her eviction from the stall where she was carrying on her business. The plaintiff states the defendant used the building materials that she had deposited at the suit premises to build a home where he moved in with another woman by the name JM. The plaintiff avers that the defendant abused her trust for him and is bent on keeping her away from her hard earned and acquired property in respect of which the defendant virtually contributed nothing. The plaintiff avers that efforts to have the dispute arbitrated by the local chief have yielded no fruit and the plaintiff fears that unless an inhibition is placed against the land title pending the determination of this suit the defendant can dispose the subject suit premises which would render the instant suit superfluous and would be prejudicial to the plaintiff's interests.
7. The defendant filed a replying affidavit sworn on 13th May 2015 in opposition to the plaintiff's application. The defendant makes admission that the plaintiff was carrying on business at [Particulars Withheld] Discount Centre in 2008 and that he the defendant was a technician attendant involved in phone repair employed by one Peter Makori. The defendant depones that he sublet some space from the plaintiff at her [Particulars Withheld] Plaza business premises towards end of 2008 and was paying a sum of kshs. 5,000/= for the space. The defendant states that the plaintiff moved out from [Particulars Withheld] Plaza to Kisii Bus park and that as her lease had not expired he took up her space and continued paying rent after he paid the plaintiff good will of kshs. 100,000/=. The defendant denies he had any intimate relationship with the plaintiff and maintains he was paying rent for the space he occupied.
8. The defendant avers that he solely purchased a piece of land from **Kenneth Oyaro Samuel** as per the agreement for sale dated 24th April 2010 and he states he withdrew a sum of kshs. 300,000/= from his K-Rep Bank account towards the purchase of the parcel of land and maintains he is the one who paid the balance of kshs. 20,000/= as per the acknowledgment marked "**G0C8**" and

- further that he is the one who purchased the portion of 13ft by 70ft which was to make provision for an access road.
9. The defendant avers that he obtained plans for his house and bought the materials for building the house and denies that the defendant had bought building materials worth kshs. 700,000/=. The defendant annexes various receipts marked “G0C15” to support his assertion that he procured the materials for building the house and not the plaintiff. The plaintiff in a supplementary affidavit sworn on 13th July 2015 in response to the defendant’s replying affidavit denies the averments by the defendant while reiterating the contents of the supporting affidavit.
 10. The parties filed written submissions which reiterate the facts as set out in their respective submissions. After carefully considering the pleadings, the application and the affidavits sworn in support and in opposition and the parties written submissions the issue to determine is whether the plaintiff has made out a case to warrant the court to make an order inhibiting the title registered in the defendant’s name until the suit is heard and determined.
 11. It is evident the defendant disputes the facts as set out by the plaintiff and in turn the plaintiff disputes the facts as outlined by the defendant. If the facts as alleged by the plaintiff are proved a trust would be established in regard to the registration of the defendant as the owner of land parcel [Particulars Withheld]. The plaintiff alleges the property was purchased using funds she had borrowed from her “Chamas” and from KWFT and if this is proved then it would mean the plaintiff has an interest in the suit property. Equally the plaintiff avers that she took loans to purchase material that were utilized in constructing the house on the suit property. On the basis of the document tendered as evidence, the averments of the plaintiff cannot be dismissed outright as the documents appear to lend some credence to the plaintiff’s claims and if proved could possibly establish the plaintiff’s claim.
 12. The defendant for his part has disputed the evidence tendered by the plaintiff as a fabrication. The defendant denies having had a relationship with the plaintiff yet the plaintiff appears to have had a footprint whenever the defendant passed. The business premises at [Particulars Withheld] Plaza undoubtedly were in the name of the plaintiff and the plaintiff, though the defendant denies, appears to have played a key role in the purchase of the suit premises. She appears to be the person who sought and identified the property for purchase and was even a witness in regard to the agreement dated 21st May 2010.
 13. The registration of the defendant as the sole owner is not disputed but the plaintiff avers the registration was as a trustee as the plaintiff and the defendant were for intent and purposes “**husband and wife**” who were investing for their mutual benefit which in effect rendered the defendant a trustee for the plaintiff. The facts leading to the purchase and transfer of the suit property to the defendant being highly contested, it is essential to conserve the subject matter until the suit is heard and determined so that the parties are heard and the suit determined on merit. The essence of preserving the subject matter is, so that the property, the subject matter of the suit is not interfered with and the same will be available to the party adjudged to be entitled to it. The plaintiff as per the plaint seeks a declaration that the defendant is holding the property in trust for her. Unless the property is preserved and the same is available at the conclusion of the case the plaintiff’s suit may be rendered futile in case the property is disposed of or in any other manner dealt with before the finalization of the suit.
 14. The court under section 68 (1) Land Registration Act can make an order inhibiting the registration of any dealings over any land for such period as it may order or direct. Section 68 (1) Land Registration Act provides:-

1. **The court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or charge.**
2. **A copy of the inhibition under the seal of court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.**

An inhibition perse is not an injunction but rather an instrument that restricts the registration of any dealings in relation to registered land pending the happening or occurrence of an event. It is essentially a tool to preserve the integrity of a property for a given period or duration or the happening of an event. I would not say the same principles for the granting of a temporary

