



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 131 OF 2007**

**WILSON WAITHAKA GITAU.....PLAINTIFF**

**VERSUS**

**KENYA WINSTON COMPANY LIMITED.....DEFENDANT**

**RULING**

This ruling is with respect to the Plaintiff's Notice of Motion dated 28<sup>th</sup> March 2013 brought under the provisions of section 68 of the Land Registration Act of 2012, and sections 13 (7) and 19 of the Environment and Land Court Act of 2011. The Plaintiff is seeking the following orders in the said Notice of Motion:

1. That the Defendant its agents and/or servants be restrained from selling, alienating, offering for sale or in any other way dealing with land parcel number 7418/30 (Original number 7418/3/26) (hereinafter referred to as the suit property), situated North East of Ruiru Town pending the hearing and determination of this application *inter partes* and thereafter the determination of this suit.
2. The officer in charge Ruiru Police Station be ordered to enforce compliance.
3. That an order be issued inhibiting registration of any dealing with land parcel Number L.R. 7418/30 situated North East of Ruiru Town pending the hearing and determination of this application and/or suit.

The Plaintiff states that he is the *bona fide* owner of suit property, and that the Defendant has through its agent and/or servant one Joseph Kimata Wachira been selling and/or offering the suit property for sale to innocent parties. Further, that the Defendant fraudulently registered the suit property to itself, and that there is already an interlocutory judgment in favour of the Plaintiff pending formal proof. The Plaintiff attached an official search of the suit property to his supporting affidavit sworn on 28<sup>th</sup> March 2013.

The Defendant opposed the Plaintiff's Notice of Motion in a replying affidavit sworn by its Director, Keziah Njeri Gachanja, on 15<sup>th</sup> April 2013. The deponent stated that the Plaintiff was the previous registered proprietor of the suit property prior to the successful sale and transfer of the property to the Defendant. She denied that there was a fraudulent transfer of the suit property to the Defendant, and stated that there was no proposed sale of the said property as alleged.

The parties filed written submissions with the court. The Plaintiff's counsel in submissions dated 20<sup>th</sup> May 2013 argued that the Plaintiff had established a *prima facie* case, and that the balance of convenience is in his favour as he may suffer irreparable damage as the subject matter of his application is land. Further, that the Defendant has not controverted the fact that the Plaintiff was the registered proprietor of the suit property, and has not shown how it acquired the land.

The Defendant's counsel in submissions dated 25<sup>th</sup> June 2013 contended that the Plaintiff has no legal or equitable interest in the suit property capable of being protected by injunctive relief, and has not brought any evidence to establish his allegations of fraud. It was submitted that the Plaintiff had therefore not shown a *prima facie* case or any irreparable damage that he was likely to suffer. Further, that the interlocutory judgment in the Plaintiff's favour was granted irregularly as the summons to enter appearance were not served on the Defendant.

I have read and carefully considered the pleadings and submissions made by the parties herein. The issues to be determined are whether the Plaintiff has met the requirements stated in **Giella vs Cassman Brown & Co Ltd, (1973) EA 358** as to the grant of a temporary injunction, and whether the court can issue the orders of inhibition sought. The requirements for a temporary injunction are that the applicant must establish a *prima facie* case, and that he or she would suffer irreparable loss which may not be compensated by an award of damages. If the Court finds that the two requirements are not satisfied, it may decide an application on the balance of convenience.

The first question to be answered therefore is whether the Plaintiffs have established a *prima facie* case. The Plaintiffs have attached as evidence a copy of title to the suit property which shows that it was registered in his name on 20<sup>th</sup> December 1990 and transferred to the Defendant on 20<sup>th</sup> December 1996. He has alleged that he never effected the said transfer to the Defendant, and that it was done irregularly and fraudulently. This court cannot make a finding that there was the likelihood of a fraudulent transfer in the absence of further evidence, and to this extent finds that the Plaintiff has not established a *prima facie* case.

The issue left to be determined therefore is whether an order of inhibition can issue with respect to the suit property. Section 68 of the Land Registration Act of 2012 provides for the issue of inhibition orders as follows:

**“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 the court, with particulars of the land, lease or charge affected, shall be sent to the Registrar, who shall register it in the appropriate register.**

**(3) An inhibition shall not bind or affect the land, lease or charge until it has been registered.”**

It is clear from these provisions that the power granted to the court are discretionary, and is to be exercised when there is good reason to preserve, or stay the registration of dealings, with respect to a particular parcel of land for a temporary period. There is no requirement that the applicant must show a *prima facie* case before an inhibition can issue, and the general principle that will apply is that the discretion is exercised judicially by being exercised in good faith, for a proper purpose, taking into account all relevant factors and is reasonable in the circumstances of the case.

I have in this regard taken into account the allegations by the Plaintiff of fraud in the transfer of the suit property to the Defendant, and the fact that he already has interlocutory judgment in his favour. I also note that the Defendant in its replying affidavit has stated that they have not given any instructions for the sale of the suit property, and will therefore not be prejudiced if the order of inhibition were to be granted. I accordingly find that there are reasonable grounds for the grant of an inhibition with respect to the suit property.

The Plaintiffs' Notice of Motion dated 28<sup>th</sup> March 2013 is therefore allowed only to the extent that this court grants an order inhibiting registration of any dealing with land parcel Number L.R. 7418/30 situated North East of Ruiru Town pending the hearing and determination of this suit or until further orders.

The costs of the said Notice of Motion shall be in the cause.

Dated, signed and delivered in open court at Nairobi this \_\_\_\_19<sup>th</sup>\_\_\_\_ day of  
\_\_\_\_September\_\_\_\_, 2013.

**P. NYAMWEYA**

**JUDGE**