

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS

Civil Suit 387 of 2011

CREDIT BANK LIMITED.....1ST PLAINTIFF

VERSUS

VINCENT SANKALE ROIMEN.....1ST DEFENDANT

ELIZABETH WANJIRU GITHIOMI.....2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL (FOR AND ON BEHALF OF THE DISTRICT

LAND REGISTRAR – KAJIADO.....3RD DEFENDANT

RULING

The application filed herein dated 13th October 2011 is seeking an order that pending the hearing and determination of the main suit filed herein, a temporary injunction do issue restraining the 1st and 2nd Defendants/Respondents whether by themselves, their agents, servants or any one purporting to claim through them or acting under their authority or instructions or in any manner howsoever from alienating, damaging or otherwise dealing or committing any acts of waste on Land Title Number **KAJIADO/KITENGELA/6560** (hereinafter referred to as the suit property), or committing any acts of interference with the Plaintiff's interest in the said land. The said application is filed pursuant to the provisions of Order 40 Rule 1(a) and Order 51 Rule 1 of the Civil Procedure Rules of 2010, and sections 1A, 3A and 63 (c) and (e) of the Civil Procedure Act (Cap 21).

The grounds for the said application are elaborated in a supporting affidavit sworn on 12th October 2011 by Janet N. Wekesa, the head of the Legal and Recoveries Department of the Plaintiff. The grounds are that the suit property is legally and validly charged by the 1st Defendant/Respondent to the Plaintiff/Applicant to secure repayment of a loan of Kshs.1,600,000/= plus interest thereon, advanced by the Plaintiff/Applicant to the 1st Defendant/Respondents. Further, that the 1st Defendant/Respondent continuously defaulted in repayment of the loan amount prompting the Plaintiff/Applicant to serve the 1st Defendant/Respondent with a Statutory Notice of Sale.

That Plaintiff also states that following failure of the negotiations between the 1st Defendant/Respondent and the Plaintiff over settlement of the loan amount, the Plaintiff/Applicant carried out a search at the Kajiado District Lands Registry on or about 16th April 2002, which search revealed that the 2nd Defendant/Respondent was the registered proprietor of the suit property, and that the charge registered in favour of the Plaintiff/Applicant over the suit property had been removed from the register of the said property.

The Plaintiff avers that the change of ownership and subsequent registration of the 2nd Defendant/Respondent as the proprietor of the subject property was done illegally, and is apprehensive that the 1st and 2nd Defendants/Respondents may deal further with the suit property thereby exposing the

plaintiff/Applicant to great financial loss in so far as recovery of the debt owed to the Plaintiff/Applicant by the 1st Defendant/Respondent is concerned. The Plaintiff has attached as evidence a copy of the title Document of the suit property registered in the 1st Defendant's name, copies of Certificates of Official Search dated 22/10/1996 and 16/4/2002, a copy of the Legal Charge referred to, and a copy of the Statutory Notice of Sale dated 19/11/1998.

The Defendants did not respond to the application, neither were they present or represented at the hearing of the application on 16th November 2011. The Court having satisfied itself that they were duly served with the hearing notice from the Affidavit of Service sworn by Charles Soita on 21st October 2011 and filed in court on 24th October 2011, proceeded to hear the application.

I have read and carefully considered the pleadings, evidence and written submissions by the parties to this application. I will proceed with the determination of the application on the basis of the requirements stated in **Giella v Cassman Brown & Co Ltd, (1973) EA 358**. While the Plaintiff has produced evidence that the 1st Defendant charged the suit property in their favour, I find that it has failed to establish a *prima facie* case for the reason that there has been undue delay in bringing the application for injunction. The Plaintiff discovered that the said charge had been removed from the register on 16th April 2002, but filed this application on 13th October 2011, almost ten years later. No justifiable reason has been proffered by the Plaintiff for this delay, and in my opinion the delay is an indication of acquiescence of the *status quo* on the part of the Plaintiff, and if this court is to grant an injunction ten years after the material event, it will more likely disturb rather than preserve the *status quo*.

The Plaintiffs' application dated 16th April 2002 is therefore denied. Each party will bear their own costs.

Dated, signed and delivered in open court at Nairobi this 25th day of January, 2012.

P. NYAMWEYA

JUDGE