



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY COURTS
CIVIL CASE NO. 201 OF 2008
PAN AFRICAN CREDIT & FINANCE LTD.
(In liquidation) ::: **PLAINTIFF**
- VERSUS -
NICHU INVESTMENTS LTD. ::: 1ST DEFENDANT
RAJNIKANT KHETSHI SHAH :: 2ND DEFENDANT
HASMUKH SUMARIA :: 3RD DEFENDANT

J U D G E M E N T

The Plaintiff, Pan African Credit & Finance Limited (in liquidation) filed a claim in court against the three (3) Defendants claiming *inter-a-alia* an order directed specifically to the Defendants jointly and severally, directing them to execute, within a period specified by this court, re-assignment of mortgage(s), replacement mortgage(s) and any other necessary documents to facilitate conclusion of the process of renewal of lease of the mortgaged properties L.R. No. 209/21/3 Nairobi and L.R. No. 209/21/4/Nairobi.

The 1st Defendant is a limited liability company and was the registered owner of the above properties L.R. No. 209/21/3 and L.R. No. 209/21/4 Nairobi (the mortgaged properties) which properties were mortgaged to the Plaintiff to secure loan and other banking facilities from time to time at the 1st Defendant's request. The particulars of the mortgages were as follows:-

1. Mortgage dated 13th September 1982 over the mortgaged properties for the principal sum of Kshs.5,000,000/= plus interests bank and other charges.
2. Further mortgage dated 20th December 1984 for principal sum of Kshs.5,000,000/= plus interest bank and other charges.
3. Further mortgage dated 25th September 1985 for the principal sum of Kshs.3,000,000/= plus interest bank and other charges.

The 2nd and 3rd Defendants are alleged to have executed the said mortgages for and on behalf of the 1st Defendant as directors of the 1st Defendant. The leaseholds over the mortgaged properties was granted by King Edward the 8th for 74 years as from the 1st of November 1929 and was due to expire on 1st

November 2003 prior to grant of a renewal by the Commissioner of Lands.

In the course of time in or about October 1988 the 1st Defendant committed acts of default on the said loans and other banking facilities consequent to which the Plaintiff took steps to exercise its statutory power of sale under Section 69 A of the Transfer of Property Act, 1882. It is at this stage that the Defendants resisted the Plaintiff's effort to exercise its power of sale under the mortgage by filing suit number Milimani HCCC No. 2671 of 1995 and obtaining a temporary injunction restraining the Plaintiff from exercising its statutory power of sale pending the hearing and determination of the suit. The said suit was determined on 30th July 2004 and the Defendants claims dismissed with costs while a Judgement of Kshs.131,646,472/= with interests was entered for the Plaintiff in terms of the counter-claim. It is alleged that as at 30th July 2004 the total sum due from the 1st Defendant to the Plaintiff is Kshs.280,360,097.5 and the same continues to accrue interest at court rates.

During the period of the said court proceedings the leaseholds in respect of the said mortgages expired on 1st November 2003. The Plaintiff, in its capacity as the attorney appointed by the 1st Defendant under the said mortgages duly applied to the Commissioner of Lands for a grant of lease renewal and the extension was granted for a further term of 50 years from 1st November 2003. However, the 2nd and 3rd Defendants are alleged to have refused to formalize the extension of the lease, issuance of a new grant and execution of all documents necessary for the formalization of extension of the lease. The Plaintiff has prepared all required documentations in preparation of re-assignment and reconveyance as well as replacement mortgages over the mortgaged properties. The Plaintiff further alleges that it has undertaken payment of all charges and statutory dues to the Commissioner of Lands including payment of land rent, rates, e.t.c. to protect mortgagee interest in the mortgaged properties. The failure by the Defendants to execute the above documents is what has brought the Plaintiff to court seeking the orders already stated above.

The Defendants filed their Defence on 18th June 2008 and totally denied the claim. The Defendants allege that the mortgage instruments referred to herein were executed in favour of the Plaintiff who was specifically granted an interest only in the residue of the term of the leases held by the Plaintiff over the two properties, which term ended on 1st November 2003. The Defendants allege that the rights acquired by the Plaintiff were specific in time, expired and were duly extinguished on 1st November 2003 by virtue of the law and the terms of the mortgage instruments executed as a matter of mutual agreement between the parties. The Plaintiff's interest was subject to the known terms of the lease held by the 1st Defendant.

The above is the brief summary of the case before this court.

In their reply to Defence the Plaintiff reiterated the contents of the Plaintiff and dismissed the Defence. The Plaintiff subsequently filed a Chamber Summons application dated 4th August 2008 and sought to have the Defence struck out and judgement entered for the Plaintiff on the allegations that the Defence was a mere defence, a sham and an embarrassment to the court. The said application was dismissed with costs by the court on 14th November 2008 paving way for the full hearing of the suit.

Parties filed separate issues. The Defendant filed theirs on 5th February 2010 while the Plaintiff did the same on 28th January 2010.

At the hearing the Plaintiff called one witness Doris Mwaari Mugambi, P.W. 1, who testified that she is the Liquidation Agent of the Plaintiff appointed by the Deposit Protection Fund Board (DPFB), the liquidator of the Plaintiff appointed by Central Bank of Kenya. Her responsibility is to preserve the assets of the institution under liquidation, in this case the Plaintiff. She realizes securities, undertakes debt collection and pays depositors and creditors dividends. The witness took the court through the mortgage documents relevant to this suit and how the loan and other bank facilities were granted to the 1st Defendant. She testified that it was the responsibility of the 2nd and 3rd Defendants as directors of the 1st Defendant to execute the re-assignment of mortgage and the replacement mortgage and place the seal of the 1st Defendant on the said documents. P.W. 1 testified that the failure by the 2nd and 3rd Defendants to execute the necessary documents has prejudiced the Plaintiff. The Defendants were receiving all the

rent over the suit property while the Plaintiff was meeting all the bills over the mortgaged properties i.e. land rent, rates and insurance. P.W. 1 denied that the re-assignment of mortgage and replacement mortgage constituted new contracts. Upon cross-examination P.W. 1 re-stated her evidence in chief and emphasized that the issue of extensions of lease was never canvassed in the earlier suit being HCCC No. 2671 of 1995. She testified that the Defendants were obliged under the said mortgage documents, to apply for extension of the lease and that the Defendants were obliged to execute any documents. As long as the Plaintiff's mortgage remained unpaid, the Plaintiff's mortgagee's right remained in place. P.W. 1 produced the Plaintiff's list and bundle of documents as well as Plaintiff's further list and bundle of documents as exhibits P 1 (a) and P 1 (b).

The Defendants called Rajnikant Khetshi Shah, D.W. 1, to give evidence. He stated that he is one of the 1st Defendant's directors and that the 1st Defendant borrowed Kshs.13 million plus interest and offered L.R. No. 209/21/3 and L.R. No. 209/21/4 Nairobi as security.

He stated that they had refused to sign the re-assignment of mortgage and the replacement mortgage because when the 1st Defendant gave out a mortgage, it gave it for the residue of the term of the lease, which ended on 1st November 2003 and that the mortgage documents which were sent to them to sign constituted a totally new contract.

The witness testified that they can only execute the documents if they are directed by the Defendant's Board and his Board had not given such a direction.

On cross-examination, the witness admitted that the directors of the 1st Defendant were himself (2nd Defendant) and the 3rd Defendant. He admitted that had the company repaid the debt as expected by 1987 – 88, the Plaintiff would not be in court demanding that they execute a Replacement Mortgage and a Re-Assignment of Mortgage.

The witness confirmed that the 1st Defendant still owns and occupies the suit property, and collects approximately Kshs.1 million rent per month.

The witness confirmed in his testimony that the Plaintiff renewed the lease for them. Without evidence, he alleged that the 1st Defendant had also applied to extend the lease. He admitted that the Plaintiff and not the Defendant has over the years paid land rent and insurance over the property. D.W. 1 also stated that they did not see the need to insure the property. When asked whether he had insured the motor vehicle he had used to drive to court, he admitted that indeed he had insured his vehicle. He admitted that he saw no need to insure the property.

He admitted that the 1st Defendant was not paying the bills. That the 1st Defendant was also not paying the loan despite the Defendants making over Kshs.1.0 million from the property.

An analysis of the evidence shows that there is no dispute that the said mortgages were executed as stated or that the lease was expiring on 1st November 2003. There is also no dispute of the fact that the 1st Defendant defaulted in its obligation under the said mortgages and this led to the filing of suit Milimani HCCC No. 2671 of 1995 through which the Defendants sought to bar the Plaintiff from exercising its statutory power of sale over the mortgage properties. The suit was not determined until 30th July 2004. Throughout this period the 1st Defendant enjoyed injunctive orders against the Plaintiff without performing its obligations under the said mortgage. It was evident to the Defendant that the relevant leases would soon expire on 1st November 2003 but the 1st and 2nd Defendant deliberately chose not to renew the same, yet they knew that the mortgages were based on the life of the leases. The question which arises here is how a prudent businessman who owns such a leasehold would behave in regard to such property. Was this behavior meant to spite or punish the Plaintiff? Regardless however, the Plaintiff managed to secure an extension for 50 years from 1st November 2003. The Plaintiff prepared re-assignment of mortgage and replacement of mortgage for execution by the Defendants to restore the Plaintiff's Chargee's rights over the properties. Parties were unable to agree on proper terms of the new

facilities. In the Plaintiff's view this was meant to sabotage the Plaintiff's attempt to restore its security.

D.W. 1 testimony was curious. The witness showed absolutely no care in the case. It did not bother the witness that the Defendants already owe the Plaintiff a sum over Kshs.280,000,000/=. The fact that the 1st Defendant did not pay land rent, rates and insurance on its own properties did not bother the witness and he testified that they could not make these payments as they had nothing to benefit for doing that. In other words the Defendant did not care for their properties and were ready to lose it so long as the Plaintiff also lost its rights. The Defendant's conduct and attitude, as shown through the testimony of D.W. 1, and their treatment of the Plaintiff's rights was something akin to economic sabotage. D.W.1 admitted receiving a monthly income of Kshs.1.0 million from the mortgaged properties, yet they do not pay rates, they do not pay land rent or insurance and still they pay nothing towards the loan owed to the Plaintiff. Asked why he had not executed the re-assignment mortgages and the lease, the witness boldly told the court that the Board of Directors of the 1st Defendant had not authorized him to execute the mortgages yet the board consisting of 2 directors one of which is the witness himself. The witness boldly told the court that he insures his motor vehicle which he drove when he came to court to testify, yet he did not see the need to insure properties from which he is receiving Kshs.1.0 million per month and which properties were valued at over Kshs.130.0million in July 2000. The court was not impressed by the testimony of D.W.1. He came across as a person who did not have the interest of the 1st Defendant at heart, leave alone that of the Plaintiff. He expressed an "I don't care" attitude in the whole matter despite the fact that the Defendant owed over Kshs.280,000,000/= to the Plaintiff and they are not servicing the loan at all. The witness gave the impression that the Defendants are happy with the debt owed and if the Plaintiff lost the same, this was none of their business. The witness completely forgot that this is a court of equity. He testified that they could not execute the required documents due to what they called differences in the terms. However, he did not show in what way these terms were different and what kind of amendments were necessary. No evidence was led to show how the re-assignment of mortgage and the replacement mortgage vary in substance with the mortgages 1, 2 and 3.

In spite of the testimony given by the D.W. 1, I will attempt to arrive at a judgement purely based on the issues drafted by the parties, and the facts as they relate to the applicable law.

The separate issues filed by the parties can be summarized as follows:-

- (a) Whether the mortgagees interest created by the 1st Defendant in favour of the Plaintiff over L.R. No. 209/21/3 and L.R. No. 209/21/4 were specific in time and limited to the unexpired period of the lease.
- (b) Whether the court can in law compel the Defendants to re-enter into an agreement of mortgage transaction with the Plaintiff and create continuing rights under the proposed re-placement mortgages.
- (c) Whether the Plaintiff is entitled to the benefit of the renewed lease under Sections 64 and 71 of the Transfer of Property Act, 1882.

There are other issues which the parties raised but which I do not find necessary to deal with as they have been adequately dealt with in a Ruling of this court delivered on 14th November 2008. These issues include the defence of *res-judicata* raised in paragraph 7 (e) and 7 (g) of the defence. Although by her Ruling aforesaid lady Justice Lesiit found that the defence of *res-judicata* is not available to the Defendant, D.W. 1 in his evidence in chief and during cross-examination stated that the issue of the Plaintiff seeking renewal of lease and replacing the mortgage was not subject of the earlier litigation. In any event this matter has conclusively been determined in this court and I find that the Defence that the current suit is *res-judicata* is unavailable to the Defendants.

The other issue which was also considered by Lady Justice Lesiit was whether or not the suit was statutory barred under the Limitation of Actions Act. This Defence was pleaded in paragraph 7 (1) of the defence. This court in the said Ruling of Lady Justice Lesiit considered this Defence at length and rejected it.

I have also considered it and in my view it deserves a summary dismissal.

The other issue is the Defence of election between statutory, power of sale, and executing decree in the case of Milimani HCCC No. 2671 of 1995. In paragraph 7 (d) and 7 (h) of the Defence the Defendants avers that since the Plaintiff has a monetary decree in the said HCCC No. 2671 of 1995, the Plaintiff cannot pursue the Defendants to execute the documents in pursuit of the exercise of a statutory power of sale. The Defendant has not provided a provision of the law which supports that averment. In my view, both remedies for a suit under a debt claim and the pursuit of the exercise of the Power of Sale are mutually exclusive. Once one is successfully exercised and the remedy of accounts rendered, the other automatically lapses to the extent of the accounts rendered by the mortgagee. In any event, the Defendant has not satisfied the decree, and all indications are that the Defendants are not likely to satisfy the decree any time soon. The Defendants cannot hold on to both Defences at the same time. The Defendants are acting inhumanly. Even in this kind of business, a human face is necessary. It may evoke equitable tears of the court. In my judgement, the Plaintiff has the complete freedom of election. It can choose to file a suit as it has done; it can also choose to pursue and to exercise its statutory power of sale, as it seeks now. The Plaintiff cannot just sit back and relax. It cannot sit on its rights. It must exercise all the rights within its disposal. The Plaintiff is simply exercising an equitable principle that equity does not favour the indolent.

Now, back on issue number 1. Were the said mortgages created by the 1st Defendant in favour of the Plaintiff limited to the unexpired period of the lease? In paragraph 7 (a) (b) and (c) of the Defence the Defendants state that the Plaintiff was only entitled to a mortgage over the 2 properties for the residue of the unexpired term of the lease. The Defendants submitted that the intentions of the parties when they executed the mortgages was that the mortgagee's rights would be extinguished once the lease was determined. The Defendants relied on page 41 of the lease, line 13 which appears after Clause 8 (h) of the Agreement, where it stipulates:-

“AND SECONDLY ALL THAT piece or parcel of land situate in the city of Nairobi . . . TOGETEHR WITH the buildings and equipments now or hereinafter erected and being on the said two pieces of land for all the residue now un-expired of the term seventy four years from first day of November One Thousand Nine Hundred and Twenty Nine.”

Relying on the *“for the residue now unexpired”* the Defendants contended that Section 64 and 71 of the Transfer of Property Act 1882 did not assist the Plaintiff because the two Sections provided that they applied only in the absence of a contract to the contrary. Section 64 and 71 of the Transfer of Property Act stipulates:-

“S. 64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.”

“S.71. Where the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract the contrary, shall, for the purposes of the security be entitled to the new lease.”

The Defendants submitted that the security created was time specific and if the Plaintiff wishes to have another mortgage created it has to be negotiated afresh. In response to this the Plaintiff submitted that the reference to the *“residue of un-expired term”* simply describes the legalistic details of the mortgaged property and is a common feature in RTA Leases and Mortgages which have, at the title, various references based on the year of the grant and other memoranda attached to the grant. Therefore, the Schedule set out above (at paragraph 26 – 27 of the Plaintiff's bundle) is not a contractual matter. It is a matter of registration details of the Titles at the Nairobi Lands Registry.

In my view, under Clause 5 (a) of Mortgage 1 at pages 21 – 22, of the Plaintiff's bundle, the 1st Defendant mortgaged the 2 properties to the Plaintiff indefinitely until the 1st Defendant repaid the mortgage. Clause 5 (a) states as follows:-

“5 (a) For the better securing of the mortgage debt and all the other monies and expenses intended to be secured the mortgagor DOTH HEREBY ASSIGN the said two pieces of land more particularly described in the Schedule hereto TOGETEHR WITH the buildings and improvements which now or may hereafter be erected thereon (herein called ‘the mortgaged properties’) in favour of the mortgagee with the mortgaged debt interest and all other monies and expenses as aforesaid.”

Clause 7 (c) is even more specific. It states:-

“That without prejudice to any equitable right of consolidation it is hereby declared that no property of the mortgagor which at the date hereof or at any other time hereafter is subject to a mortgage or charge in favour of or vested in the mortgagee shall be redeemed except on payment not only of all moneys thereby secured but also of all moneys hereby secured.”

In my view, the intention of the parties was that the period of the mortgage facilities was only determined by full repayment of all sums secured by the mortgages. The reference to unexpired term in the schedules, in my view is a common practice and descriptive as the Registrar of the Mortgage can only register a mortgage for the unexpired time of the lease. This does not however, affect the terms as agreed by the parties in the mortgage document.

More specifically, however, Sections 64 and 71 of the Transfer of Property Act apply in this matter in favour of the Plaintiff in the absence of a contract to the contrary. The Defendants have not shown the existence of the “*contract to the contrary*”. In the Defendants’ view, the mortgage documents 1, 2 and 3 above said are the “contracts to the contrary”. I do not accept this view. A contract to the contrary may be either a specific clause in the mortgages providing that the two Sections 64 and 71 of the Transfer of Property Act shall not apply or it may be a contract subsequently entered into expressly excluding the applicability of the said sections. To the contrary, the only nearest “contract to the contrary” is the express behavior and conduct of the Defendants. They have, by their conduct, continued to benefit under the two mortgages; they enjoy the loan and financial facilities granted thereto; they receive an admitted sum of Kshs.1.0 million per month and pay absolutely nothing towards the loan repayments; they pay neither land rent, nor rates nor insurance in respect to the mortgage property. All these payments are indeed effected by the Plaintiff. On what basis should the Defendants allow the Plaintiff to make these payments except on the fact of implied existence or continuation of the said mortgage contracts? The Defendants cannot get it both ways. Either the leases and by extension the mortgage faculties expired and the Defendants took full responsibility for the care of the properties; or they have not expired to justify the continued benefit the Defendants are deriving from the said mortgages.

Finally, D.W. 1 in his testimony said that if the mortgage documents were drafted ‘word for word’ like the old documents the Defendants would be willing to execute the same. This is a tacit acceptance by the Defendants’ sole witness that the Plaintiff is entitled to the prayers sought herein except that the Defendants are not happy with the draft. But even this is a lame excuse. It is factually untenable and impossible to draft the renewed documents ‘*word for word*’ like the old one. Several charges have taken place including applicable dates, interests or even the value of the suit property. While the drafting of the new terms is not expected to vary the rights and obligations of the parties in any material particulars, it would still not be possible to draft the new documents word for word the old one. In any event D.W. 1 admitted during cross-examination that the 1st Defendant’s property cannot be discharged until the Plaintiff received full payment.

In view of Clauses 5 (a) and 7 (c) (II) of the Mortgage and in view of the admissions made by D.W. 1; and in view of continuing benefits by the Defendants under the mortgage facilities, and in view of the fact that they have continued to allow the Plaintiff to make all the payments towards preserving the mortgaged property, I find that the said mortgaged facilities were not limited to the un-expired term of the leases. I also find that the Plaintiff, having obtained a renewal of the lease is protected under Section 64 of the Transfer of Property Act 1882 since there was no “contract to the contrary” to avoid the applicability of the said Section.

The second issue is whether this court can in law compel the Defendants to re-enter into an agreement of

mortgage transaction to create continuing rights under the proposed re-placement mortgages. My simple answer to this issue is that the court is not compelling any party, especially the Defendants, to enter into any new agreement. The duty of the court is to ensure that the parties honour the existing arrangements. The existing arrangements, as we have seen, have self-perpetrating clauses which it is the duty of this court to ensure compliance with. As I have already stated that Section 64 of the Transfer of Property Act apply in this matter, the parties must now proceed from there. It is not the duty of this court to write a new agreement for the parties. It is the duty of this court to compel parties to comply with agreements they themselves have transacted.

In answer to the third issue, my answer is in the affirmative. The Plaintiff is entitled to the benefit of a renewed lease under Section 64 and 71 of the Transfer of Property Act. In fact, the entire evidence of the Defendant's Witness (D.W.1) was not very helpful to the Defendants. He virtually admitted that the Plaintiff was entitled to the Plaintiff's claim. These admissions were made in philosophical terms and in an attitude of a person who does not really care for, or feel the pain of the money lender, and of a beneficiary, who, because of the weight of financial claim against him, did not really care about the outcome of the case. It is the duty of this court to uphold the rights of the parties, especially where those rights have been proved. In my judgement the Plaintiff has proved its case against the Defendants on a balance of probability as required by law.

Finally, there have been allegations in the Defence that the 2nd and 3rd Defendants have been wrongly joined in this suit, and that this has been done without lifting the corporate veil. The company is said to be a separate legal entity from the directors. My answer to this allegation is that in paragraph 3 of the Defence the Defendants admitted that the 2nd and 3rd Defendants are directors of the 1st Defendant Company. This means that there is no dispute that it was the legal duty of the 2nd and 3rd Defendants to execute the mortgage documents. Indeed, the 2nd and 3rd Defendants executed and witnessed the first mortgage documents herein. In his evidence, D.W. 1 confirmed to the court that indeed he and Mr. Hasmukh Sumaria, the 3rd Defendant, were the only directors of the 1st Defendant Company, and that the 2 of them constituted the 1st Defendant's Board of Directors. It follows that it is their joint and several refusal to execute the required documents that has caused the 1st Defendant not to comply. It is they, the 2nd and 3rd Defendants alone, who can emboss the company seal on the documents and witness it. It is the 2nd and 3rd Defendants alone who can hold a board meeting and decide to comply or not. Being the human face of the 1st Defendants, it is they who have made a decision not to sign the required documents. Since the matter requires human action to fulfill a statutory duty under Sections 64 and 71 of the Transfer of Property Act, it was in my view, necessary to enjoin the 2nd and 3rd Defendants to the suit.

The legal remedy of lifting a corporate veil is so that the owners of the company may be established and be directed to perform the required obligations. In the instant case, what is the use of lifting the corporate veil when the directors and/or owners of the company are known and they are not denying that they are such directors and/or owners? For the due performance of any orders which may issue from this court, I find that the joining of the 2nd and 3rd Defendants to this suit, is perfectly in order and I hold it to be so.

In the upshot, I wish to state that the mortgage transactions the subject matter of this suit is both a legal transaction and an equitable transaction. Equity and its principles or maxims are balanced to ensure that a party who seeks (financial) aid when in need and who promises to return the same does so without undue prompting. There is no equity when one party seeks a loan, which is advanced to him, and when it is his turn to repay the same he declines or frowns, with the ultimate aim of willfully defaulting. People who transact under the law must respect the very law. People who transact under equity must respect and observe the old age maxims and principles of equity. Equity regards as done that which ought to be done. Under the said Mortgage transactions equity and law expected that the lease would be extended and the mortgage(s) would be re-assigned and replaced in the event that the unexpired term of the lease expired before the loan facilities were fully repaid. The natural consequence of Section 64 of Transfer of Property Act is not just a matter of law. It is also the equitable thing to do. Since equity regards as done that which is ought to be done, I have no hesitation entering judgement for the Plaintiff against the Defendants jointly and severally as follows:-

1. An order directed specifically to the 1st, 2nd and 3rd Defendants, jointly and severally, directing them to execute, within a period of 45 days from the date of this Judgement, re-assignment of Mortgage(s), Replacement Mortgage(s) and any other necessary documents to facilitate conclusion of the process of renewal of lease of the Mortgaged Properties L.R. No. 209/21/3 Nairobi and L.R. No. 209/21/4 Nairobi.
2. An order that in the event of default on the part of the Defendants with respect to order (1) above, the Deputy Registrar of this court do execute re-assignment of mortgage(s), replacement mortgage(s), and any other necessary documents to facilitate conclusion of the process of renewal of lease of the Mortgaged Properties L.R. No. 209/21/3 Nairobi and LR. No. 209/21/4 Nairobi.
3. An order that if the 2nd and 3rd Defendants default with respect to Order (1) above, and notwithstanding the Deputy Registrar's compliance with Order (2) above, the 2nd and 3rd Defendants be arrested and put in civil jail at the Industrial Area Prison in Nairobi for a period commencing with their arrest, upto the time the Deputy Registrar shall have fully complied with Order 2 above and the required documentations are perfected and registered.
4. The costs of this suit shall be for the Plaintiff.

This is the Judgement of the court.

DATED, READ AND DELIVERED AT NAIROBI

THIS 20TH DAY OF APRIL 2012.

E. K. O. OGOLA

JUDGE

PRESENT:

Mwangi for the Plaintiff

N/A for the Defendants

Teresia – Court clerk