



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**  
**CIVIL SUIT 89 OF 2011**

**JAMES GICHURU NJUGUNA ::: PLAINTIFF.**

**VERSUS**

**MOSES BANDA ::: DEFENDANT.**

**R U L I N G.**

In his suit, the plaintiff seeks orders that the caution placed on L.R. No. Trans Nzoia/Kapkoi/57 be removed by the Land Registrar Kitale and that the sale agreement dated 8<sup>th</sup> October, 2007 be declared as having lapsed and a nullity. These orders are sought against the defendant who has filed a defence and counter claimed against the plaintiff for specific performance and transfer to him (defendant) of ten (10) acres of the suit property.

The present application by way of a notice of motion, dated 30<sup>th</sup> November, 2011 is for the grant of an inhibition on the suit property pending hearing and determination of this suit and an order that the Land Registrar Trans Nzoia be directed to register the inhibition.

The application is brought under section 3 and 3A of the Civil Procedure Act and section 128 of the Registered Land Act.

Section 128 (1) of the RLA provides that:-

***“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 further order, the registration of any dealing with any land, lease or charge.”***

An ex-parte order inhibiting the registration of any dealing respecting the suit property was issued by the court on the 30<sup>th</sup> November, 2011 and when the matter came up for inter-parties hearing for confirmation or otherwise of the order, the defendant/applicant was represented by learned counsel, **Mr. Ingosi**, while the plaintiff/respondent was represented by learned counsel, **Mr. Wachira**.

Having heard the submissions by both sides, it was apparent that the objection to the application by the plaintiff was based on the legality of a sale agreement dated 8<sup>th</sup> October, 2007 entered between the defendant and the plaintiff in which the defendant was purchasing ten (10) acres of the suit property from the plaintiff.

It is contended by the plaintiff that the sale agreement became null and void after the defendant defaulted in the payment of the entire purchase price by the 8<sup>th</sup> December, 2007. It is further contended by the plaintiff that a caution registered on the suit property by the defendant was subsequently removed by the Land Registrar. In addition to the foregoing, the plaintiff argues that the sale agreement was also void due to want of the prerequisite consent of the Land Control Board.

In answer to the foregoing arguments by the plaintiff, the defendant contended that the sale agreement was valid since the provisions of the law were fully complied with. It is apparent from the contentions by both sides that a determination at this juncture on the validity of the sale agreement by the court would invariably lead to a determination of the suit. It would therefore be best for such a determination to be held in abeyance until such time that the suit shall be heard and finally determined.

In the meantime, it would be necessary to preserve the suit property. That is where the inherent powers of the court come into play as well as section 128 of the Registered Lands Act. In that regard, the application is granted as prayed in prayers (3) and (4) of the appropriate Notice of Motion.

Ordered accordingly.

**[Read and signed this 19<sup>th</sup> day of June, 2012.]**

**[In the presence of Mr. Ambutsih/b for M/s. Kibe for defendant/applicant and Mr. Kweyu h/b for Kangethe for plaintiff/respondent.]**

**J.R. KARANJA.  
JUDGE.**