



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 1 of 2011

STEPHEN WANYEE ROKI.....PLAINTIFF

VERSUS

K-REP BANK LIMITED.....1ST DEFENDANT

CITY COUNCIL OF NAIROBI2ND DEFENDANT

DAVID WAWERU.....3RD DEFENDANT

RULING

The Plaintiff/Applicant carries on business as a contractor in Nairobi and maintains a current account with the 1st Respondent. In 2006, the 1st Respondent advanced to the Applicant an overdraft facility secured by a charge over the Applicant's two plots at **Dagoretti/Riruta, Nairobi**. Upon the Applicant falling into arrears over the repayments, the 1st Respondent issued a statutory notice in November, 2010 under **Section 74(1)** of the **Registered Land Act**. This led to the subsequent sale of the securities.

As a consequence of the foregoing, the Applicant filed a suit against the bank, the City Council and the buyer. The case against the Nairobi City council is that they offered the Applicant a contract for construction of a school in Nairobi. In order to facilitate timely payment of his obligations to the 1st Respondent, the Council undertook to pay his dues timely. However, they failed to honour their word thereby leading to the sale of the securities. The 3rd Respondent is joined in his capacity as a purchaser of the Applicant's plots. He is joined to the suit on the ground that although he purchased the plot(s), he has yet to be registered as the proprietor.

At the oral canvassing of the application, Mr. Achungo appeared for the Applicant; Mr. Muriuki for the 1st Respondent; Mr. Kuria for the 2nd Respondent; and Mr. Muchoki for the 3rd Defendant. After considering the pleadings and the respective submissions of the counsel, I note that the position taken by Mr. Kuria for the 2nd Respondent is that the suit against the 2nd Respondent is not legally sustainable. On behalf of the 3rd Respondent, Mr. Muchoki submitted that the Applicant had no cause of action against the City Council of Nairobi, and that the Applicant's right of redemption had been extinguished. These are valid arguments and the court shares the sentiments of both counsel. The agreement between the Applicant and the City Council of Nairobi as to the payment schedules was not binding on the 1st Respondent for the simple reason that there was no consideration between the 1st Respondent and the City Council.

As for the 3rd Respondent, he was an innocent purchaser for value and he should not be denied the fruits of his purchase. For anyone to suggest that he should be denied registration is unfair. In the first instance, in a purchase at an auction, the property passes to the highest bidder upon the fall of the hammer. Secondly, it is not alleged that there was any irregularity in the sale, and if there was, it would be curable under **Section 77 (3)** of the **Registered Land Act**.

In the circumstances, the Applicant has not established a *prima facie* case with a probability of success as required in **GIELLA'S CASE**. I accordingly find that the Applicant is not entitled to an injunction and his application is hereby dismissed with costs.

L. NJAGI
JUDGE

DATED and **DELIVERED** at **NAIROBI** this 20th day of November, 2012.

MUTAVA
JUDGE