



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL SUIT NO. 75 OF 2008

FELIX KIPRONO KEMBOI.....1ST
PLAINTIFF

=VERSUS=

BARCLAYS BANK (K) LTD LTD.....1ST
DEFENDANT

GARAM INVESTMENTS.....2ND
DEFENDANT

RULING

The 1st defendant, **Barclays Bank of Kenya Ltd**, has brought this application dated 2nd November, 2010 under the provisions of section 143 of the Registered Land Act (Cap 300 Laws of Kenya), Order XXXVI Rule 3F of the Civil Procedure Rules and section 3A of the Civil Procedure Act (Cap 21 of the Laws of Kenya). The substantive orders sought are expressed as follows:-

1.

2. That pending the inter partes hearing and determination of this application, the plaintiff be restrained either by himself, his agents, servants, cronies whomsoever from offering for sale, transferring, charging or dealing in any other manner whatsoever with the following parcels of land namely:-

(a) Title No. Nandi/Kibwareng/92

(b) Title No. Nandi/Kamobo/1379

(c) Title No. Kapsabet/Municipality/62

(d) Title No. Nandi/Kamobo/3272

(e) Title No. Nandi/Kandoro/505

(f) Title No. Kapsabet Municipality/393

3.

4. That the court be pleased to order rectification of the same Titles except (f) to reflect the duly registered charges thereon by the plaintiff in favour of the 1st defendant.

5. That the court be pleased to order rectification of the register in respect of the following Title No. Kapsabet Municipality/393 and consequently to cancel the purported transfer in favour of M/s **Nandi Hekima Savings and Credit Co-operative Society Limited** and reflect the duly registered charges thereon by the plaintiff in favour of the 1st defendant.

The application which is supported by an affidavit of **Nereah Okanga**, an advocate with the 1st defendant, is based on the grounds that:-

(i) The 1st defendant is the legal charge in respect of the aforementioned titles by virtue of legal charges duly registered in favour of the 1st defendant to secure loan amounts advanced by it.

(ii) The plaintiff has himself, agents and/or conspirators (known and unknown to the 1st defendant) fraudulently caused the land register in respect of the said titles to be interfered and tampered with to conceal the fact that the said titles are actually charged to the 1st defendant bank.

(iii) The plaintiff has further fraudulently purported to sell and transfer title No. Kapsabet Municipality/393 to M/s **Nandi Hekima Savings and Credit Co-operative Society Limited**.

(iv) The said **Nandi Hekima Savings and Credit Co-operative Society Limited** had full knowledge and /or ought to have known and had notice of the status of the subject parcels of land prior to the purported sale and transfer.

The gist of the 1st defendant's case is that the said titles were charged to it by the plaintiff for sums advanced to him. He defaulted and attempts to exercise its statutory power of sale have not borne any fruit as the same have been frustrated by the plaintiff notwithstanding that the said parcels are still under the said charge. The 1st defendant, in May, 2009 sought to confirm the status of the said titles and, to its shock, realized that parcel No. Kapsabet Municipality/393 had been transferred to M/s **Nandi Hekima Savings and Credit Co-operative Society Limited** – hence this application.

The application is opposed and there is a replying affidavit of the plaintiff. It is deponed in the affidavit *inter alia*, that the decision to discharge Kapsabet Municipality/393 was with the consent of an auctioneer and a member of staff of the 1st defendant to facilitate sale of the same by private treaty and utilize the proceeds thereof to, among other things, repay the loan; that on discharge, the said parcel was sold to **Nandi Hekima Sacco** who are now lawfully registered as proprietors thereof and that he has no desire to defraud the 1st defendant with whom he has had a business relationship since 1984.

The application was then fixed for hearing on 4th May 2011. Come that date, counsel for the 1st defendant applied for adjournment initially on the basis that the application was to be heard before **Karanja J.** and subsequently that the application was not for hearing but for mention. I declined to grant an adjournment because the reasons for the application were not sound. The application was therefore not prosecuted and is liable to be dismissed. Prayer 2 was sought pending hearing and determination of the application. There was no prayer for the restraining order to be given pending hearing of the suit. Prayer 2 is therefore spent. Prayer 3 was for leave to serve M/s **Nandi Hekima Savings and Credit Co-operative Society** with the application. That was allowed and service was effected. The prayer is also spent. Prayers 4 and 5 seek final orders of the court. I am afraid the same are inappropriate in an interlocutory application. I decline to grant them.

In the premises, the entire application is dismissed. The plaintiff has sworn that he has no desire to defraud the 1st defendant and has no plan to dispose of any of the subject properties. Under the inherent jurisdiction of the court, I grant an order in terms of prayer 2 pending hearing and determination of the suit.

Costs shall be in the cause.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 25TH DAY OF MAY 2011.

F. AZANGALALA,

JUDGE.

Read in the presence of:-

- (1) **Ogado** for applicant and
- (2) **Mr. Kiboi** for Interested party.

F. AZANGALALA

JUDGE

25/5/2011