



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

ELC CASE NO. 331 OF 2011

APA INVESTMENTS (K) LIMITED.....PLAINTIFF

VERSUS

SHATISH RATHOD.....1st DEFENDANT
PRAFULA KIRITI RATHOD.....2ND DEFENDANT

RULING ON DIRECTIONS

On 20th September 2011, the Plaintiff/Applicant's Notice of Motion dated 7th July 2011, was adjourned to 3rd October 2011, when counsel for the Respondent brought to the attention of the court the existence of another matter, Succession Cause No. 941 of 2011 (Previously ELC No. 68 of 2011) saying that the present suit and the Succession Cause ought to be heard together or this suit be stayed pending the outcome of the Succession Cause.

Counsel for the Applicant objected to such an approach stating that the suits are not related. The trial judge then, the Hon. Mr. Justice Warsame, directed that the Succession Cause file be placed before court for directions in this matter and ordered that the 1st Defendant in that case BABULAL CHANDULAL RATHOD presents himself before court at the hearing on 3rd October 2011. He did not do so but the file in respect of the Succession Cause, which was not placed before court on 3rd October 2011, has since been brought.

BABULAL CHANDULAL RATHOD, the 1st Defendant in the Succession Cause is shown in these proceedings to be the person from whom the Plaintiff herein derives his title over the suit property L. R. No. 209/40/5, the subject matter herein, as well as in the Succession Cause.

On 7th March 2011, an injunction order was issued in the Succession Cause, against the Plaintiff, on the ground that the said BABULAL CHANDULAL RATHOD had fraudulently transferred the suit property to the Plaintiff herein, who is named as the 2nd Defendant in the Succession Cause. The Defendants

herein claim that the said property forms part of the Estate of Manubhai Khodidas Bhavan and that the said Babulal Chandulal Rathod illegally obtained a Grant of Letters of Administration on the strength of which he proceeded to have the suit property transferred to himself, subsequent to which he then transferred the same to the Plaintiff herein. The sale of the suit property to the Plaintiff is one of the issues sought to be determined in the Succession Cause under prayer 4 of the Originating Summons filed on 18th February 2011, as ELC No. 68 of 2011.

In my considered view, the subject matter herein being the same as the one in the Succession Cause and the court having issued injunctive orders against the Plaintiff herein in respect to the said subject matter, it would be inappropriate to proceed with the Plaintiff's application dated 7th July 2011, as though the two suits herein were not related.

As the Plaintiff's claim to ownership hinges on whether good title passed from the 1st Defendant in the Succession Cause, I am of the view that the Succession Cause should first be determined while these proceedings are stayed. To proceed otherwise would be prejudicial to the orders made in the Succession Cause and would amount to a mockery of justice.

The Plaintiff is represented by the same counsel in the Succession Cause and ought to have disclosed the existence of the Originating Summons and the injunction given by the Family Division of the High Court when filing this suit and the application of 7th July 2011.

In my view, had the court been aware of the other cause and the orders made therein on 7th March 2011, it would not have issued the orders of 7th July 2011, which appear to be in conflict with the earlier orders issued in the Succession Cause. The said interim orders, having been obtained in circumstances whereby the Applicant is guilty of material non disclosure are hereby vacated.

Accordingly, I give directions that these proceedings be stayed pending the out come of the Succession Cause. The Succession file reference No. 941 of 2011 is returned to the Family Division forthwith with a copy of this Ruling.

DATED and Read in open court this **1ST** day of **NOVEMBER, 2011**

M. G. MUGO
JUDGE

In the presence of:

Mr. Ngugi
Mr. Karanja

For the Applicant
For the Respondents