

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 524 of 2009

JACKLINE W. NJERU T/A

JAVISAPA ENTERPRISESPLAINTIFF

VERSUS

CANUCK HOLDINGS LIMITEDDEFENDANT

RULING

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1. This suit was filed by the Plaintiff on 24th July 2009 against the Defendant. The Plaintiff is seeking for two principal orders; a claim of Kshs. 26,500,000/= and the referral of the dispute regarding a balance of Kshs. 6,000,000/= for arbitration in accordance with a joint venture agreement and construction agreement between the Plaintiff and the Defendant. As the record will bear, this matter is quite protracted, there are other suits to wit; Milimani CMCC No. 2338 of 2009 which seems to have been withdrawn. HCCC No. 235 Nairobi and HCCC No. 292 of 2009 between the same parties whose outcomes are not quite clear.

2. On 5th February 2009, the Defendant filed a Chamber Summons under **Order 36 rule 3B** and other provisions of the law, seeking for orders that a caveat placed on its parcel of land known as **LR No. 3734/15 MUTHANGARI GARDENS LAVINGTON NAIROBI** be removed. This application is supported by the grounds stated on the body thereto, and the supporting affidavit by **Michael Scanlon** sworn on 4th February 2010. According to the Defendant it is the absolute registered owner of the suit property. The Plaintiff has wrongfully registered a caveat on the suit premises on misrepresentations that there was a court order obtained in this suit when indeed there is no court order by this court. The Plaintiff's claim is for a contract work which does not give her legal interests capable of giving a right of lodging a caveat. These same grounds are elaborated in greater details by the matters disposed to in the supporting affidavit. The Defendant has annexed a copy of the title over the suit premises which show it is registered in its name and the Plaintiff placed a caveat on 18th June 2009 purportedly with a court order issued by this court.

3. In response to this application, the Plaintiff filed a replying affidavit and a Chamber Summons under the same provisions of **Order 36 Rule 3B of the CPR** and **Section 57(8)** of the Registered Titles Act seeking for orders for the extension of time of the caveat she lodged on the suit premises. This application is supported by the grounds that the Plaintiff lodged a caveat over the suit premises owing to contractual obligation by the Defendant which has not been fulfilled. The Plaintiff received a notice by the registrar of title on 18th February 2010 pursuant to the provisions of **Section 57(6)** of the **Registration of Titles Act** to remove the caveat within 45 days. The Plaintiff has also sworn an affidavit on 26th February 2010, explaining how she registered the caveat to protect her interests for a claim of Kshs. 26,500,000/= which is owned by the defendant. The Plaintiff contends that unless the caveat is extended, she will lose the money which is owed to her by the Defendant.

4. The two applications by the Defendant and the Plaintiff seek for the same orders in that the Defendant is seeking for removal of the caveat while the Plaintiff is seeking for its extension. Under **Section 57** of the **Registered Titles Act**, it is provided as follows:

“Any person claiming the right, whether contractual or otherwise, to obtain some defined interest in any land capable of creation by an instrument registrable under this Act, and any person in whose favor a debenture has been executed by a company within the meaning of the Companies Act or by a company to which Part X of that Act applies creating a floating charge over land (hereinafter called the caveator), may lodge a caveat with the registrar of the registration district within which the land is situated forbidding the registration of any dealing with that land either absolutely or unless the dealing is expressed to be subject to the claim of the caveator as may be required in the caveat, or to any conditions conformable to law expressed therein.”

5. Also in the case of **Mohammed and another v Haidara [1972] 1 EA 166 (CAN)** the Court of Appeal as per **Spry, V.P** while dealing with almost a similar matter on whether or not to extend a caveat held that an application for extension of a caveat should be treated in the same way as an application for an interlocutory injunction and that what an applicant must show, is a prima facie case with a probability of success. The court further found that a party seeking for extension of a caveat should provide evidence showing their interests in the property. The Plaintiff's claim is founded on a contract for construction. It is for a liquidated claim of Kshs.26,500,000/=. There is no indication that this claim was to give rise to any creation of an instrument or any rights over the Defendant's property. According to the Defendant, the plaintiff has already been paid Kshs.109,700,000 out of the contract value at kshs.109,300,000.

6. I find the Plaintiff's claim is for a liquidated sum of money which has no bearing on the suit premises. Ordinarily if the plaintiff was successful in her liquidated claim, at the execution stage that is when she could seek for an order of execution by way of an attachment of the

defendant's immovable property. That stage has not been reached in this matter. I also notice in this file, the plaintiff had filled an application seeking for orders that a caveat be placed on the suit premises which she seems to have abandoned therefore the order registered against the title purportedly issued by this court is a misrepresentation

7. Going by the principles of granting an injunction, and also the provisions of section 57 of the RTA, I am not satisfied that the Plaintiff has adduced sufficient evidence to warrant the extension of the caveat. On the other hand, I find the Defendant has been able to show that the plaintiff's claim for a breach of contract does not represent any registrable interests over the suit premises. Accordingly, the plaintiff's application fails, while the Defendant's application is allowed and the caveat placed on his property by the plaintiff is to be lifted. Costs of this application shall be in cause.

RULING READ AND SIGNED ON 30TH APRIL 2010 AT NAIROBI.

M. K. KOOME

JUDGE