

CITY COUNCIL OF NAIROBI PLAINTIFF

VERSUS

JOKAMU HOLDINGS LTD. 1ST DEFENDANT

STANDARD CHARTERED BANK LTD. 2ND DEFENDANT

R U L I N G

Application dated 22/5/08 brought under **Order 39 Rule 1 and 2, Civil Procedure Code and Section 3A Civil Procedure Act** seeking orders of temporary injunction restraining the first and second respondents from auctioning, selling, alienating, evicting, trespassing or in any manner dealing with land known as L.R. No.17338 pending hearing inter partes and or further orders of this court, on the grounds stated in the application.

The 2nd defendant has threatened to auction the applicant's suit premises. The applicant has interest in the suit property subject of suit **HCC No.114/2001** which suit is still pending before this court. This court (Aganyanya, J. as he then was) ruled that the first respondent could not obtain injunctive reliefs against the applicant due to non disclosure of material facts. The first defendant's acquisition is tainted with fraud, misrepresentation of material facts and outright illegality. It would be unjust for the 2nd defendant to be permitted to auction the applicant's property before the circumstances of his acquiring the charge are investigated.

Also the land is a public utility housing a health centre together with doctors, nurses and subordinate staff quarters. It is in public interest that the application be allowed. Thus application is supported by affidavit of Mary N. Ngethe, Director of Legal Affairs of the applicant authorized to swear this affidavit. The Commissioner of Lands issued grant No. 77214, suit premises for the purposes of putting up residential houses for the doctors, nurses and other supporting staff. The applicant constructed a public health centre and residential houses for staff.

However, the first respondent has produced a suspicious grant shown as "MNN 2" which was obtained without resolution of the applicant and the purported transfer was not with Minister's consent contrary to provisions of **Section 142 (6) of Cap. 265**. Considering the particulars of irregularity and fraud and misrepresentation, it has come to the attention of the applicant that 2nd respondent intends to auction suit premises which it recklessly granted to the first respondent disregarding public interest which matters are subject of the above mentioned suit.

That the 2nd defendant ought to be restrained from auctioning the property until this suit is heard and determined. The 2nd defendant has caused a replying affidavit to be sworn by Josephine Ngunjiri. The first defendant has also caused a replying affidavit to be sworn by Kennedy Mwigi Mbau. The court has noted the statements on both affidavits. There is an attempt to justify the activities of defendants sworn by the two defendants.

On 11/11/1999 it appears the property was transferred to first defendant for Kshs.300,000/= and by 24/2/2000, a charge was registered in favour of 2nd defendant to secure Kshs.5,000,000/=. On 12/8/1998 a grant was registered in the name of applicant Kennedy Mwigi Mbau in his replying affidavit says he purchased the property in the year 1997. First defendant purchased the land for Kshs.4,000,000/= which was paid forthwith. The property was sold by Leading Tower Investment Ltd. This information is very contradicting to what is represented in the documents exhibited.

On considering all matters disclosed by the defendants, it is not disputed that this was public land for public purposes. I am satisfied that the applicant has demonstrated a *prima facie* case with a chance of

success. It would be unjust to allow the same to be auctioned to serve private interests before this suit is heard and determined. I allow the application and grant prayers sought under prayer 2 namely; that interlocutory injunction is hereby granted restraining the first and second defendants from auctioning, selling, alienating, evicting, trespassing or in any other way dealing with L.R. No.17338 pending hearing and determination of this suit or further orders of this court.

The defendants shall pay costs of this suit.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 26th day of October 2009.

JOYCE N. KHAMINWA

JUDGE