



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

MILIMANI COMMERCIAL COURTS

Civil Case 719 of 2003

PETER KAMAU IKUGU.....PLAINTIFF

VERSUS

BARCLAYS BANK OF KENYA LTD.....1ST DEFENDANT

PETERSON OGINO ONGARO.....2ND DEFENDANT

RULING

Application dated 20/5/2009 is brought under Section 3, 3A, 63 (e) civil procedure Act Cap 21. Section 53 and 59 Order L Rule 1 and 3 for orders that:-

- (1) The transfer and registration of Peterson OginO Ongaro the second defendant as proprietor of LR2/653 is unlawful, illegal, null and void.
- (2) And that his registration be cancelled and nullified.
- (3) And that Principal Registrar of titles be and is hereby directed to effect these aforesaid orders and the costs be provided for.

The grounds upon which the application is based on the ground that:-

- (1) The registration was made with intent to defraud the plaintiff and is injurious.
- (2) Judgment had been entered against 2nd defendant.
- (3) The 2nd defendant may transfer the property to a third party.

The application is supported by affidavit of Peter Kamau Ikugu the plaintiff which has exhibited "PK1-1" in which at page 9 "***The upshot of the alone reason is that the plaintiff's application being of merit is hereby allowed The defence dated 7/11/2007 which was irregularly placed in the court file by 2nd defendant is hereby truck out with costs.***"

Meaning that the application of the plaintiff was successful and the defence of second defendant struck out. Thereafter a prohibition was issued by this court and registered. Then the property was sold

to 2nd defendant at a throwaway price.

The 2nd defendant has filed a replying affidavit. He admits that his defence was struck out. He denies having committed fraud in this matter. He admits that the matter has not been heard and determined. He says he is a purchaser for value without notice.

The first defendant has also filed grounds of opposition saying that the application is an abuse of process and it seeks to circumvent a trial in court and that the Principal Registrar of Titles is not a party to this suit.

I have considered the submissions of parties. It is clear the suit has not been heard. It appears the present interest of the plaintiff is protected by the registration of inhibition by order dated 23/4/2007. Orders sought under prayers 1 and 2 of the application can only be made after a full hearing and taking of sworn evidence.

I find the application without merit and the same is dismissed. Costs shall be in the cause.

Orders accordingly.

Dated, signed and delivered this 6th day of November, 2009.

JOYCE N. KHAMINWA

JUDGE