



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL
COURTS)
Civil Suit 445 of 2007**

**ERICK O. ODINDO
PLAINTIFF/APPLICANT**

VERSUS

**NATIONAL BANK OF KENYA LIMITED 1ST
DEFENDANT/RESPONDENT**

**ALICE MBINYA OMBAYO 2ND
DEFENDANT/RESPONDENT**

**DICKSON TUMBO T/A SADIQUE ENTERPRISES 3RD
DEFENDANT/RESPONDENT**

RULING

Erick O. Odindo (*herein referred to as the plaintiff*) has brought this suit in his capacity as the administrator and legal representative of the Estate of George Ishmael Odindo (*Deceased*).

The suit has been initiated by way of a plaint filed against National Bank of Kenya Limited (1st Defendant), Alice Mbinya Ombayo (2nd Defendant) and Dickson Tumbo T/a Sadique Enterprises (3rd Defendant), wherein the plaintiff seeks orders for:

- (a) A permanent injunction restraining the defendants, their agents, servants or anybody acting under their authority, from advertising for sale, selling, disposing, developing, dealing with or any manner interfering with LR. KISUMU/FORT TERNAN/474 (hereinafter referred to as the suit property),
- (b) A declaration that the charge documents registered on 28th November, 1989 and 25th April, 1989 are unlawful and irregular and therefore a nullity,
- (c) That the 1st Defendant provides an account,
- (d) A declaration that the purported sale and transfer of the suit property to the 2nd Defendant is null and void, and an order that 1st Defendant refund any excess money paid by the deceased's estate,
- (e) An Order that the suit property be returned to the deceased's estate,
- (f) General and Special Damages,
- (g) Cost of the suit.

Filed simultaneously with the plaint, is a chamber summons brought under Certificate of Urgency under Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules and Section 3 (A) of the Civil Procedure Act Cap.21 of the Laws of Kenya. In the application, the plaintiff seeks an order of temporary injunction restraining the defendants, their agents, servants or anybody acting under their authority from advertising for sale, selling, disposing off, transferring, developing or in any way dealing with the suit property until the hearing and determination of the plaintiff's suit.

It is this application which is subject of this ruling.

The application is supported by grounds stated on the body of the application as well as an affidavit sworn by Erick O. Odindo on the 27th August, 2007, a supplementary affidavit sworn by Erick O. Odindo on 8th November, 2007 and a supplementary affidavit sworn by Caleb Kere Odindo.

The facts relied upon by the plaintiff as deponed to in the various affidavits are as follows:

The Plaintiff's late father George Ismael Odindo (*herein referred to as the deceased*), who was the registered owner of the suit property, charged the suit property to the 1st Defendant in November, 1989 as security for a financial consideration. The deceased experienced difficulties in repaying the loan, so he assigned proceeds of his sugarcane farming from Muhoroni Sugar Company to the 1st Defendant. In addition, the deceased made direct payments to the 1st Defendant through his monthly pension between 1st November, 1989 and 31st August, 2006. Although the deceased passed away on the 12th August, 2003, his pension continued to be received by the 1st Defendant until 31st August, 2006.

In addition, the plaintiff to whom the deceased delegated authority to follow up the issue of the debt to the 1st defendant also made some direct payments to the 1st defendant. Notwithstanding these efforts, the 1st defendant purported to sell the suit property to the 2nd defendant through the 3rd defendant, on the 31st August, 2005. The plaintiff contends that the purported sale was illegal as no statutory notice was served upon the deceased's personal representative. The plaintiff further contends that there was no evidence that the statutory notice dated 25th September, 1995, alleged to have been served on the deceased in 1995 was sent to the deceased.

The plaintiff explained that the deceased filed a suit in Kisumu *CMCC No.378 of 1996* wherein a consent was recorded as to how the deceased was to make payment to the 1st Defendant, and that the deceased complied with the consent. It was contended, that the 1st defendant ought to have served a fresh statutory notice on the administrator of the estate of the deceased before purporting to sell the property. Although a redemption notice dated 11th June, 2005 was issued, the notice was in respect of a completely different property i.e. Kisumu/Fort Ternan/48/474. The advertisement for the public auction for 31st August, 2005, was also in respect of the same property i.e. Kisumu Fort Ternan/48/474. It was further alleged that the redemption notice was not served as required under Section 153 of the Registered Land Act.

The plaintiff contends that the purported transfer of the suit property to the 2nd defendant is tainted with fraud on the grounds that there was no valuation done in respect of the suit property and that Section 77 (6) of the Registered Land Act (Cap.300) was not complied with as no notice was sent to the District Commissioner of Kisumu District, wherein the land is situated. It was contended further, that no auction actually took place, and that there was no evidence that the second defendant, did in fact pay the required 25% at the fall of the hammer, as there was contradiction regarding the alleged payment.

The plaintiff maintained that the deceased had in fact overpaid the 1st defendant. The statutory power of sale did not therefore arise. The plaintiff stated that the suit property is agricultural land and also his ancestral home where many of his relatives have been buried and also home to the children of the deceased. Therefore, if the interlocutory injunction was not granted, the entire family of the deceased would be evicted from the suit property, and no amount of damages could compensate them.

The 1st defendant has responded to the application through a replying affidavit sworn by A. R. Busisa, the manager of the 1st defendant's Kisumu branch. He reiterated that the deceased charged the suit property to the 1st defendant pursuant to an overdraft facility granted to him. The deceased received a further overdraft facility in 1991. He freely executed a further charge. The deceased defaulted in the repayment of the overdraft prompting the 1st Defendant to advertise the suit property for sale. The deceased filed a suit in *Kisumu CMCC 378 of 1996*, pursuant to which a consent was recorded. The 1st defendant maintained that only a lump sum payment of Kshs.100,000 was received from the deceased. Although his monthly pension went to the 1st Defendant, the amount was not sufficient to clear the debt. Several letters written to the deceased by the 1st defendant, between 10th August, 2000 and 28th June, 2001, regarding the default in the repayment of the debt were exhibited. The 1st defendant subsequently advertised the property for sale by public auction through the 3rd Defendant. A redemption notice was served on an adult son of the deceased. It was maintained that the statutory notice dated 25th September, 1995 was served on the deceased through his last known address, and the deceased acknowledged receipt of the notice through a letter dated 31st October, 1995. The 1st defendant was not therefore, obligated to issue another statutory notice.

Consequently, the suit property was sold at a public auction on 31st August, 2005 to the 2nd defendant at a price of Kshs.850,000/=. A certificate of sale, memorandum of sale and a letter from the 2nd defendant forwarding cheques in respect of the balance of the purchase price were all exhibited. It was contended that the suit property was transferred to the 2nd defendant and a title issued. A bundle of statements in respect of the deceased's account with 1st Defendant from March, 1989 to September, 2006 were also exhibited.

The 2nd defendant responded to the application through a replying affidavit sworn on the 9th October, 2007 and a further replying affidavit sworn on the 2nd November, 2007. She maintained that she bought the suit property at a public auction following an advertisement of the auction sale. She did not personally attend the auction but she bid through a proxy Thomas Rono Cheruiyot. She subsequently had the property registered in her name. Thereafter, she intimated to the plaintiff and his brother that she intended to take possession of the suit property. It was then that the plaintiff and his siblings started committing acts of trespass on the suit land and threatening the 2nd defendant's workers.

The 2nd defendant denied that there was any fraud or illegality in the auction sale. She maintained that the applicant was not coming to court with clean hands as he has concealed material facts, that is, his knowledge of the sale to the 2nd defendant. She explained that prior to her purchasing the suit property she had been leasing a portion of the suit property from the plaintiff's brother one Kere Odindo, since 2002. She therefore, maintained that she was in actual possession of part of the suit land by virtue of the lease. She maintained that she was an innocent purchaser for value without notice, and that her acquisition of the suit property was proper, absolute and unimpeachable.

The 3rd defendant in his replying affidavit, sworn on the 22nd October, 2007, confirm that he received instruction from the 1st defendant to sell the suit property by public auction pursuant to the provisions of the Auctioneers Act and Rules. He prepared the required redemption notice and having failed to trace the deceased, served the notice on Kere Odindo an adult son of the deceased. He also distributed handbills and advertised the auction in the Kenya Times newspaper. The auction took place on 31st October, 2005, as advertised, and the property was sold to the 2nd defendant who was the highest bidder. The 3rd defendant maintained that the deceased's son Kere Odindo was present at the auction, where the 2nd defendant paid the required 25% deposit, and was declared the purchaser. Subsequently, the 2nd defendant forwarded the balance of the purchase price to the 1st defendant.

Following an indication that the submissions were likely to be lengthy, and that there were several documents intended to be relied upon, the court directed the parties' advocates to file and exchange written submissions. Thereafter, each of the parties advocates was given time to highlight their

submissions.

Mr. Ojuro who appeared for the plaintiff, submitted that in exercising its power of sale, the 1st defendant did not comply with section 77 (1) of the Registered Land Act (Cap.300). He maintained that the suit property was not sold by public auction. He pointed out contradictions regarding the payment alleged to have been made pursuant to the auction. He urged the court to find that there was collusion to sell the deceased property by private treaty and that the sale was therefore unlawful. Secondly, he submitted that no proper statutory and redemption notices were issued or served on the deceased. He submitted that upon the death of the deceased on 24th June, 2003, the statutory notice allegedly served in the year 1995, was extinguished and the 1st defendant ought to have served a fresh statutory notice on the administrator of the estate of the deceased. In the absence of the fresh statutory notice, the sale of the suit property was unlawful.

Mr. Ojuro further submitted that the redemption notice and the advertisement contained in the newspaper were not valid as the same were in respect of a property other than the suit property. He reiterated that the plaintiff and the deceased's family were likely to suffer irreparable loss if evicted from the suit property which was their ancestral home. He submitted that the actions of the 1st defendant, were fraudulent and the transfer tainted with irregularity.

Relying on annexure E.O 12, to the supplementary affidavit sworn by the plaintiff sworn on the 8th November, 2007, Mr. Ojuro submitted that the deceased had actually overpaid the 1st defendant. He contended that there was a doubt as to whether the deceased ever drew the amounts in respect of the further charge. Regarding the interest charged on the deceased's account, he maintained that the same were contrary to the charge documents and amounted to a breach of contract. He urged the court to find that the plaintiff has demonstrated that it has a prima facie case with a high probability of success. He also argued that the plaintiff had shown that the estate of the deceased would suffer irreparable loss if the order of interlocutory injunction is not granted. Relying on the case of *James Kabathi Mwangi T/a Tangerine Auto Hardware vs. Kenya Commercial Bank Ltd, Nairobi (Milimani) HCCC No.21 of 2007*. Mr. Ojuro submitted that the defendants cannot be allowed to escape breaching the law simply because they can pay damages.

Mr. Ojuro submitted that the plaintiff had demonstrated that the deceased's family was occupying the suit land; therefore, the balance of convenience tilts in their favour.

Mr. Ngugi who appeared for the 1st and 3rd defendants, submitted that the deceased received financial accommodation from the 1st defendant in consideration of which the deceased voluntarily charged the suit property. He termed the allegations made by the plaintiff that the further charge was registered without the chargor's knowledge, a total misrepresentation which disqualified the plaintiff from the equitable remedy sought. He maintained that the deceased having defaulted in paying the amounts owed, the bank sought to exercise its statutory powers of sale but deferred this action when a consent was recorded in *Kisumu CMCC No.378 of 1996*. He maintained that the chargor did not honour the consent order as was evident from the various letters annexed to the replying affidavit.

Mr. Ngugi maintained that a proper statutory notice dated 25th September, 1995 had previously been served on the deceased. A copy of the certificate of postage was duly exhibited. Mr. Ngugi maintained that the 1st defendant was under no obligation to issue a fresh statutory notice. In this regard, Mr. Ngugi relied inter alia on the case of *Mbuthia v. Jimba Credit Finance Corp. & Anor [1988] KLR 1* in which the Court of Appeal stated as follows:

“It is plain that Section 74 did not impose on the chargee the giving of more than one notice and there is no sound policy reason why he should be obliged to give fresh notice to the chargor any time a sale was suspended to accommodate him. If such was a legal requirement, no chargee in his right mind will suspend a projected sale as a matter of favour or indulgence to a defaulting mortgagor.”

Mr. Ngugi also cited the case of *Mary Muthoni Njihia vs. Prudential Building Society, HCCC No. 441 of 2004* where Azangalala, J stated as follows:

“There is no requirement for the issuance of a second statutory notice of sale, in the event that a sale does not take place, after the issuance of the 1st statutory notice of sale. The validity of a statutory notice of sale cannot be challenged on the basis that a sale did not take place because discussions took place or negotiations were held. To put it differently; the issuance of a statutory notice of sale does not and should not close a door of discussion.”

Regarding the allegations that no auction of the suit property took place, Mr. Ngugi maintained that there was a valid and proper sale effected through a contract entered into between the 2nd defendant and the 1st defendant through the 3rd defendant. Mr. Ngugi referred to the case of *Samson Nyutu Mwachui vs. Standard Chartered Bank & 2 Others HCCC No.879 of 1998*. A copy of what purports to be the Judgment was supplied to the court. However the same was unsigned and incomplete copy and cannot therefore be relied upon.

Mr. Ngugi maintains that the allegations that the auction did not take place or that the sale was stage managed had absolutely no basis. Mr. Ngugi submitted that the suit property having been registered in the name of the 2nd defendant, the equity of redemption was lost at the fall of the hammer as the deceased title passed to the 2nd defendant upon registration. In this regard, Mr. Ngugi relied on the case of *Mbuthia vs. Jimba Credit Finance Corporation & Another (Supra)*, wherein the Court of Appeal, held that the equity of redemption was lost at the fall of the hammer during the auction sale. He submitted that at the moment, the suit property having been transferred to the 2nd defendant, there was nothing to stop, as the deceased no longer has any interest in the suit property. He urged the court to find that the plaintiff has been indolent, as he waited until the property has been registered in the name of the 2nd defendant, and equity does not aid the indolent.

Mr. Ngugi cited the case of *Ng'ayo Traders Ltd vs. Savings & Loan (K) Ltd CIVIL APPL. NO. NAI 165 of 2005* for the proposition that the chargor's remedy if any for irregular exercise of the power of sale, is only damages against the chargee. Mr. Ngugi therefore submitted that there was no basis for issuing an order of injunction.

Regarding the complaints relating to interests, penalties, other charges and alleged overpayment, Mr. Ngugi submitted that the law is well settled that an injunction will not issue merely because there is a dispute in quantum of arrears or accounts. Mr. Ngugi cited various cases in support of that proposition. He maintained that the plaintiff was not coming to court with clean hands and did not deserve the equitable remedy sought.

Finally, Mr. Ngugi pointed out that the case of *Emmanuel Egesa vs. National Bank of Kenya (Busia) HCCC No. 64 of 1997* which was relied upon by the plaintiff's advocate was overruled by the case of *George Gikubu vs. Jimba Credit & Another, Civil Appeal No.111 of 1986*.

Mr. Osoro who appeared for the 2nd defendant, submitted that the plaintiff was guilty of laches as he has come to the court after the suit property has been transferred to an innocent party. He maintained that if the plaintiff indeed believed that the auction sale was stage managed or tainted with fraud, he ought not to have stayed for almost two years before coming to court. In this regard, Mr. Osoro relied on the case of *Margaret Anyango vs. National Bank of Kenya Limited & 3 Others HCCC No.2533 of 1992* and urged the court to apply the maxim '**delay defeats equity**'. He further submitted that the plaintiff was not coming to this court with clean hands as he has been guilty of acts of trespass through his brother Kere Odindo, making it impossible for the 2nd defendant to undertake any viable economic activity on the suit land.

Mr. Osoro maintained that the allegation of conspiracy, collusion or fraudulent sale of the suit property

cannot hold against the 2nd defendant as she did not know the 3rd defendant or his agents but was a bona fide auction purchaser for value without notice. In this regard, Mr. Osoro relied on the case of **Nancy Kahoya Amadwa vs. Expert Credit Limited & Another HCCC No. 1803 of 1999**. He reiterated that the deceased's equity of redemption was extinguished at the fall of the hammer at the public auction. He urged the court to find that the plaintiff has failed to establish a prima facie case with the probability of success. He submitted that the plaintiff had not shown any peculiarity or uniqueness or sentimental attachment to the suit property to justify the inference that he will suffer irreparable loss. In this regard, Mr. Osoro cited the case of **John Njuguna Timothy & Another vs. Housing Finance Company of Kenya Ltd. and Others HCCC (Milimani) No. 2207 of 2000**. He argued that on the balance of convenience, the 2nd defendant, who has already invested a lot of money on the suit property, and planted thereon, was likely to suffer more than the plaintiff who have not developed or planted any crops on the suit property. He urged the court to find the authorities cited by the plaintiff's counsel distinguishable and disregard them.

In reply to the submissions of the defence counsels, Mr. Ojuro pointed out that in the case of **John Mwenja Ngumba vs. Kenya Commercial Bank & Another (Suppra)** no fraud was alleged, unlike the present case, where fraud was pleaded and particulars given. He further pointed out that Section 164 of the Registered Land Act excludes the operation of the Indian Transfer of Property Act to a Charge under the Registered Land Act. He therefore, urged the court to find the authorities cited by the defendants' counsel inapplicable as they all related to mortgages under the Indian Transfer of Property Act. He maintained that Section 77 (3) of the Registered Land Act talks of an irregular exercise of a power of sale, but that in this case, it was not just an irregular exercise of power, but an unlawful exercise of power. He maintained that the plaintiff was not indolent as he had filed a suit in August, 2005. He urged the court to allow the application.

This being an application for an injunction, the principles upon which such an application can be granted, are well settled as applied in the case of **Giella vs. Casman Brown & Co. Ltd, (1973) EA 58** and many other subsequent decisions:

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt it will decide an application on the balance of convenience (E.A Industries vs. TruFoods [1972] EA 420.”

In order to establish a prima facie case, the plaintiff has to satisfy this court that there has been an infringement or threatened violation of the deceased's rights or the rights of the estate of the deceased.

In this case, in an attempt to impune the sale of the suit property, by the 1st defendant to the 2nd defendant, the plaintiff has raised various issues. Some of the issues raised are as follows:

- (i) The statutory power of sale had not arisen as the deceased had overpaid the 1st defendant and no loan was owing.**
- (ii) No statutory notice was served on the deceased's personal representative, the previous statutory notice served on the deceased having been extinguished.**
- (iii) That there was no service of the redemption notice.**

- (iv) **There was no advertisement or valuation of the suit property before the sale.**
- (v) **That there was no notice sent to the District Commissioner as required under Section 77 (6) of the Registered Land Act.**
- (vi) **That the purported sale of the suit property was fraudulent as no public auction actually took place.**

In considering these issues, I take note of the fact that this is only an interlocutory application, and I must not therefore, traverse the jurisdiction of the trial court by making any definitive findings which might embarrass the trial court or prejudice the trial.

Regarding the alleged overpayment of the loan, annexure ARB 5(a), 5(b) and 6 to the affidavit of A. R. Busisa, shows that as at January, 1999, the deceased had defaulted in the repayment of the debt owed to the 1st defendant. The deceased filed a suit i.e. **Kisumu CMCC No.378 of 1996** to avert the sale of the suit property, pursuant to the statutory notice dated 25th September, 1995 (Annexure E.O 7 to the affidavit of Eric O. Odindo). The allegation that the deceased was not served with this statutory notice cannot be true as it is evident that the deceased's action in **Kisumu CMCC No.378 of 1996** was precipitated by that notice.

Allegations have been made of certain payments having been made pursuant to the consent recorded in Kisumu CMCC NO.378 of 1996. While the 1st defendant does not deny that some payments were made, it maintains that the payments made were not adequate to clear the outstanding debt and interest. Obviously, this is a matter of taking accounts. In this regard, I can do no more than repeat what the Court of Appeal stated in the case of **John Nduati Kariuki T/a as Johester Merchants vs. National Bank of Kenya Limited, Civil Application No.306 of 2005.**

“The applicant may well in due course, make out a case to challenge the calculations of his indebtedness to the bank. He may or may not be successful. The legal issue however, is whether the dispute on the outstanding loan can scuttle the exercise by a chargee of its power of sale. On that legal proposition, this court has expressed itself before and we need only refer to J. L. Lavuna & Others vs. Civil Servants Housing Co. Ltd & Another where Kwach, J.A (quoting Halsbury's Laws of England VOL.32, 4th Edition at paragraph 7255) stated,

“The mortgagee will not be restrained from exercising his power of sale because the amount due is in dispute or because the mortgagor has begun a redemption action or because the mortgagor objects to the manner in which the sale is being arranged.”

The above effectively disposes off the plaintiff's contention regarding the alleged overpayments and the issue of accounts.

As already stated, it is evident that the deceased was served with a statutory notice dated 25th September, 1995. The question is whether this statutory notice was extinguished by the consent recorded in **Kisumu CMCC No.378 of 1996** and whether the deceased's personal representative was entitled to a fresh statutory notice. I have no doubt that where a party has been served with a statutory notice, and the

sale is stopped or suspended following discussions or negotiations, such a party is not entitled to a fresh statutory notice. This position was clearly elucidated in the case of **Mbuthia vs. Jimba Credit Finance Corp. & Another [1988] KLR 1**. However, I take note of the 10-year period between the date of the statutory notice served on the deceased and the actual date of the sale of the suit property. This raises some measure of anxiety and there will obviously be need for the trial court to look at the circumstances and come to a definitive finding given the evidence.

This brings me to the redemption notice. Although it was alleged that this notice was served on a son to the deceased, Kere Odindo after failure to trace the deceased, this has been denied. That is a matter that will have to be determined based on the evidence.

Secondly, the redemption notice purported to have been served, which was exhibited as ARB 8(a) to the affidavit of A.R. Busisa, was clearly defective as it was in respect of Kisumu/Fort Ternan/48/474 which was not the same as the suit property. The allegation that the redemption notice was not properly served is therefore not without substance.

Similarly, the advertisement in the Kenya Times Newspaper for the auction sale [annexture ARB-8(c) and DMT-2] was also in respect of Kisumu/Fort Ternan/48/474. The valuation report also annexed as DMT-3 to the affidavit of Dickson M. Tumbo was for yet a different property – Kisumu/Fort Ternan/68/474 Nyando District. The requirements of Rule 15 of the Auctioneers Rules are obviously mere statutory procedures precedent to the lawful exercise of power of sale by the chargee, non-compliance of which is a mere irregularity which would not ordinarily invalidate an auction sale (**Civil Application No. NBI 165 of 2005 Ngayo Traders Limited vs. Savings & Loan (K) Ltd**). Nevertheless, in this case, allegations of fraud have been made in the plaint. Consideration of the circumstances surrounding the sale will therefore be necessary. Moreover, The plaintiff maintained that no auction sale actually took place as advertised. An examination of the exhibits particularly annexture E.O 8, AMO-3 and ARB-12 reveal inconsistencies regarding the alleged payments. This taken together with the use of a valuation report in respect of a different property, the service of a redemption notice bearing a different property and the advertisement of the sale also bearing a different property are all matters of concern. It would be for the trial court to consider and determine whether the defendant exercised his powers in a fraudulent way. For the purposes of this application, given section 77 of the Registered Land Act which imposes an obligation on the chargee to act in good faith when exercising its statutory power of sale, the evidence placed before this court is sufficient to raise a red flag regarding the possibility of the rights of the estate of the deceased having have been infringed.

A question arises as to whether the court can interfere with the title of the 2nd defendant to the suit property. The answer to that question would be dependent on the trial court's determination on the issue of fraud and whether the 2nd defendant was actually an innocent purchaser for value without notice or whether there was collusion. For the purposes of this interlocutory application, the plaintiff has satisfied this court that there is need for the rights of the estate of the deceased to be protected by being granted the interlocutory injunction sought. The issue at hand being one involving ancestral land, where the deceased's family is currently residing, damages cannot be an adequate remedy if they are evicted.

I have considered the interests of the 2nd defendant. The question as to whether she is in possession of the suit property or not is one which can only be determined through evidence at the trial. For the moment the suit property is already registered in her name and it cannot be said that she would suffer unduly if the interlocutory injunction is granted. The balance of convenience does not therefore tilt in her favour.

I have considered whether the plaintiff is deserving of the equitable remedy given the delay in bringing the application, the subsequent sale of the suit property and the registration of the 2nd defendant as registered proprietor of the suit property. The plaintiff has however explained that he did file a suit in the year 2005 i.e. **Milimani HCCC.485 of 2005** which suit was struck out. He also attempted to register a caution against the suit property, but his efforts were not successful. In the circumstances, it cannot be said that the delay was so inordinate as to render him undeserving of this court's intervention.

The upshot of the above is that I come to the conclusion that the applicant has established a prima facie case, upon which the order of injunction sought can be predicated. Accordingly, I grant the prayer for injunction as sought in prayer 2 of the Chamber Summons dated 27th August, 2007.

Orders accordingly.

Dated signed and delivered on this 28th day of February, 2008.

H. M. OKWENGU

JUDGE