



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 489 of 2006**

**1. CHARLES WAHOME MWAI**

**2. EVELYN NDOTI WAHOME .....PLAINTIFFS**

**V E R S U S**

**ISAACK KAMAU NDIRANGU ..... DEFENDANT**

**R U L I N G**

The Plaintiffs herein have sued the Defendant in this suit for of KShs. 2,825,000/00, the same being the sum paid by the Plaintiffs towards the purchase price of a caution of the Defendant's land parcel No. LR. No. 12239 situated within Nairobi city. The plaint was filed on 12<sup>th</sup> May, 2006. On 1<sup>st</sup> August, 2007 the Plaintiffs registered a caveat against the entire parcel of land prohibiting registration of any dealings with the said parcel of land. Upon objection by the Defendant the Registrar of Titles gave notice to the Plaintiffs for removal of the said caveat unless the same was extended by the court. For that purpose the Plaintiffs have come to court by chamber summons dated 25<sup>th</sup> March, 2008. The application is brought under Section 57(8) of the Registration of Titles Act, Cap 281 (hereinafter called the Act ).

When the application came up for hearing the Defendant raised a preliminary objection to the same upon the main grounds that the Plaintiffs have not claimed in the suit any registrable interest in the land, and that therefore the order sought cannot be granted, the caveat as registered being illegal in the first place. I have considered the submissions of the learned counsels appearing, including the cases cited. It is common ground that the parcel of land in question is registered under the Act. Section 57(1) of the Act provides as follows in the material part:

“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 ..... may lodge a caveat with the Registrar of the registration district within which the land is situated for bidding the registration or 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 confirmable to law express therein.”

The issue is simple and clear. It is whether the Plaintiffs in this suit claim any contractual right to obtain some defined interest in the Defendant's land capable of creation by an instrument registrable under the Act. Only in that event would be the Plaintiffs be entitled to lodge the caveat against the land and the court to extend such caveat. By their own pleadings the Plaintiffs have not claimed specific performance of the same agreement with the Defendant. What they have claimed is refund of the money they paid towards the purchase price. A claim for refund of part purchase price is not an interest in the Defendant's land, nor is it an interest capable of creation by an instrument registrable under the Act. Had they claimed specific performance, it would have been a different story. They would then be claiming an interest in the land capable of creation by an instrument registrable under the Act.

The preliminary point raised by the Defendant is that one of pure law. The Plaintiffs have not claimed any interest in the land capable of creation by any instrument registrable under the Act. They were thus not entitled to lodge the caveat, and the court will not extend would not be entitled to extend such caveat. I must therefore uphold ground 2 of the notice of preliminary objection dated 27<sup>th</sup> March, 2008. Ground

4 does not fall for consideration at this preliminary stage; it could be considered when only considering the merits of the application. Grounds 1 and 3 were abandoned by the learned counsel for the Defendant.

In the event I hold that the application by chamber summons dated 25<sup>th</sup> March, 2008 is misconceived. It is hereby strike out with costs to the Defendant. It is so ordered.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF APRIL, 2008**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 11<sup>TH</sup> DAY OF APRIL, 2008**