



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

Civil Case 5 of 2008

KENYA ANTI-CORRUPTION COMMISSION PLAINTIFF

VERSUS

WILSON GACANJA 1ST DEFENDANT

ROCKVILLE LIMITED 2ND DEFENDANT

STANDARD ASSURANCE KENYA LIMITED 3RD DEFENDANT

WILSON KIPKOPTI 4TH DEFENDANT

RULING

APPLICATION DATED 14 JANUARY 2008 FOR AN INJUNCTION

I BACKGROUND

1. The Kenya School of Law had a residential double storied house for its principal along the Bishop road Kilimani in Nairobi area being LR209/6238 IR NO.74856. This piece of property was alienated by the Commissioner of Lands and allocated to M/s Rockville Ltd. The then principal of the Kenya School of law wrote to the Commissioner of Lands confirming the availability of the house. No objection on his side to having the said house allocated. The principal, now a High Court Judge was also a director of the 2nd respondent.

2. The 2nd defendant M/s Rockville Ltd sold the property to the 3rd and 4th defendant, being M/s Standard Associate Kenya Ltd and M/S Wilson Kipkopti respectively. The latter two attempted to resist any prosecution and filed for prerogative orders being Misc.647/07 to quash any notice against them. There is another related case to this matter being Misc.42/01 concerning the same parties but on different issues.

3. The Anti Corruption court filed this suit against all the four defendants seeking a declaration that the allotment letters issued in 1997 to 1st defendant, the grant issued to the 2nd defendant, the further transfer to the 3rd defendant were all null and void. They further wish to have the grants, lease and or documents cancelled and revoked, a permanent injunction to sought to restrain the defendants from wasting and or transferring the said property.

4. On 14 January 2008 an application for an injunction was then filed seeking the orders to restrain the defendant. The defendants then filed replies to the application and inter parties hearing heard on 7 April 2008.

II: Application of 7 April 2008 for injunction

a) Arguments by applicants.

5. The applicant sought prayers for injunction. He was met with six grounds of opposition that the injunction sought in this case cannot stand. The whole suit is, namely:-

5.1 Time Barred

5.2 No authority had been sought from the

Commissioner of Lands.

5.3. The Land was available for alienation

5.4. That the property could be alienated

5.5. That the transfer from 2nd defendant to 3rd defendant was not fraudulent.

5.6. Locus by the plaintiff to sue was questioned

6. The plaintiff applicant referred me to the **Anti-corruption and Economic Act** No.3/2003 that gives the plaintiff the right to sue and be sued and have a cooperate name. Further by a recent amendments to the statutes – the statute Law Misc Act 7/07 exempted the plaintiff from the act and permitted the recovery of public property to be pursued outside the Limitation of Actions Act.

The Commissioner of Land then has been served but despite this the Government Lands Act section 7 and 8 does not indicate that such consent requires to be given by the Commissioner of Lands. He brought to my attention the case law of **R v County Council of Essex** (1887) QBN 7104. To emphasis that where new laws are created by way of procedure and remedies, those new laws are to be followed. I believe that the said advocate was bringing to my attention that the Anti-corruption act is a new law having new procedure and remedies. It therefore must be followed and old laws should not bind it and being it back.

7. From the evidence to be adduced the applicant would show the land was alienated to permit the 1st defendant and former Commissioner of Lands to allocate the land to the 2nd defendant. The 1st defendant failed in his duty and allocated public property to pass on to third parties.

ii) In reply 1st defendant

8. The 1st defendant Wilson Gachanja, a former Commissioner of Lands stated in reply that he was a Commissioner of Lands form 1988 to 1999. This meant that he was lawfully appointed by his Excellency the then President. At all times he worked diligently in this matter and therefore did procedurally the correct thing by alienating the said land. His task was to alienate land and not property/houses. He used his statutory power correctly.

iii) In reply 2nd defendant

9. The 2nd defendant stated that they followed the court laid down procedure and were within their rights.

iv) In reply 3 and 4 defendant

10. They obtained the title validly. They too followed the laid down procedure and the remedy for the plaintiff was that of damages. Nonetheless the government itself through the solicitor General claimed

the land was lawfully given to them. The office of the Attorney General, one that gives advice to the Government, confirmed they held the property correctly.

11. The question arises as to whether an injunction should issue to restrain the defendants from disposing the said suit premises?

III: Opinion

12. The issue herein is whether or the said suit premises/land was lawfully allocated or was there some elements of corruption?

13. The minute the 2nd respondent were allocated the property they disposed of it. The 3rd and 4th defendant who bought the premises, if they are indeed aware the problems the premises is now causing may also dispose of the property.

14. I believe the Kenya Anti-corruption Commission have a right to investigate any corrupt dealing. In the process of so doing there must be the preservation of the property so being investigated.

15. I believe in this case the said property in question must be preserved till the determination of the suit. Once the suit is finalized it will thereafter determine the matters in questions as to whether the property remains with the 3rd and 4th defendant or the Kenya School of Law – a government body.

16. The 2nd defendant say they are no longer interested in the property once it was sold to 3rd and 4th defendant. They are nonetheless interested parties and require to be enjoined and not to be released in this matter to safe guard their interest.

17. I accordingly grant the application for an injunction as prayed till the determination of the suit (Prayer 3). I award costs to the plaintiff to be paid by the defendants.

Dated this 8th day of April 2008 at Nairobi.

M.A. ANG'AWA

JUDGE

J.Nгаа instructed by Kenya Anti Corruption Commission Advocate of the plaintiff/applicant-present

P.C. Njuguna instructed by P.C. Njuguna & Co. Advocate of the 1st defendant/respondent-present

C.M. Njuguna & Co. Advocate for the 2nd defendant/respondent – present

P. Lillan of Kipkenda, Lilan & Co. Advocates for the 3rd and 4th Respondents - present