



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

Civil Case 121 of 2008

BEACON TOWERS LIMITED PLAINTIFF

VERSUS

TRENT HOLDINGS LIMITED 1ST DEFENDANT

MAURICE ALDOUS OPAR 2ND DEFENDANT

ENOCK H. TUITOEK 3RD DEFENDANT

REGISTRAR OF TITLES 4TH DEFENDANT

RULING

Application for injunction dated 25th March 2008

I Procedure

1. This matter, concerning an allegation of a fraudulent transfer of LR 209/13559 IR 75461 to third parties by the second and 3rd defendant herein Maurice Aldous Opar and Enock H. Tuitoek respectively to M/s Trent Holdings Limited, the 1st defendant herein was brought during the court vacation before Visram Judge.
2. The Hon. Judge issued temporary injunction restraining the defendants from selling, charging, alienating constructing upon LR.209/13559 – the suit property herein. These orders were extended by Osiemo J on 8 April 2008.
3. The file was there after placed before me for inter parties hearing on 28 April 2008. On that date the defendant/respondent stated they required time to file the necessary papers and allow their advocates come on record. The court granted an adjournment and further gave leave to the parties to file affidavit in reply. The inter party date was reserved for 4 June 2008.
4. On 4th June 2008, apart from the advocate for the 1st defendant, the 2nd, 3rd and 4th defendants failed to enter appearance and or come on record in this matter. No reply in the application was filed. M/s S. Adere for 2nd defendant came on record but was unable to file a replying affidavit.
5. This Court proceeded with the hearing of the application for an injunction dated 28th March 2008 under Order 1Xb r3 (a) Civil Procedure Rules being satisfied that the defendants were duly served.

III: Application for injunction

6. The company plaintiff M/s Beacon Towers Limited alleged that it had two directors. Later three being Kantibhai Maganbhai Patel and Harish Ashabhai. The third director was so appointed on 15 June 2007 being Pritibala Shah, were the proprietors of the suit land LR 209/13559; LR 75461. Registration of Titles Act.

7. The said directors allege that upon the death of one of one of the directors necessitating the appointment of Pritibala Shah. The 2nd and 3rd defendant purporting to be the directors transferred the suit land in question by way of way of a sale agreement to the 1st defendant company. This was so done whilst the plaintiff directors held the title.

8. They claim fraud occurred basically when the law required for any transfer to occur there must be the surrender of the original title. In this case a copy of the title only, was provided for purposes of the transfer.

9. The purported buyers/purchasers of the land defendant No. 1 did so without verifying who the correct directors were.

10. The plaintiff pray that the defendants be restrained from selling, alienating or attempt to construct on the suit premises till the determination of the main suit.

11. Letters of undertaking has been duly issued by the plaintiff in event the orders sought were not correctly obtained.

III: Opinion

12. The allegations before Court clearly shows that there is a prima facie case made out against the defendant to warrant an injunction to issue against them.

13. I accordingly grant the application for injunction till the determination of the suit against the 1, 2 and 3 defendants. I award costs to the plaintiff applicant to be paid by defendant 1, 2 and 3.

14. There will be no injunction issued against the 4th defendant who is protected by the Government Proceedings Act Cap. 40 namely, no injunction can issue against the government.

DATED THIS 5TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

W . Amoko instructed by Inamdar & Inamdar & Co. Advocates for the plaintiff – present

P. Patel instructed by Pramod Patel & Co. Advocates for 1st defendant – present

S. Adere instructed by for Adere & Co. Advocates for the 3rd defendant–present

No appearance for 2nd and 4th defendants.