



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 273 of 2008**

**PUNDA MILIA CO-OP. SOCIETY .....PLAINTIFF**

**VERSUS**

**SAVINGS & LOANS (K) LTD. .... DEFENDANT**

**R U L I N G**

Originating summons dated 22/5/08 seeking orders to restrain the respondent from selling, alienating, transferring, interfering or dealing with premises known as L.R.209/138/44 on the ground that the applicant stands to suffer irreparable loss if orders sought are not granted. The application is supported by affidavit of Joseph Wanyoike Ngaruiya, Chairman of the plaintiff society which shows that the subject matter of suit is valued at Kshs.75 million but it was sold under dubious circumstances by the City Council for Kshs.3,000,000/=. That sale was set aside on 12/3/1997. That by that time the respondent had secured a charge to secure a loan of Kshs.3.5 million. That the purchaser of the property died in September 2005 and no substitution has been made in this matter and therefore any suit against her has abated.

It is feared that the respondent intends to sell the property by private treaty. This would be contrary to the judgment dated 12.3.1997 by High Court and Case No.234/1996. An appeal against that judgment was struck out as incompetent Civil Appeal No.98 of 1997.

Upon reading the affidavits filed by both parties my answer to questions protest under Originating Summons dated 22/5/2008.

No.1 - in the circumstances disclosed the injunction restrains the defendant transferring, disposing or in any manner interfering with the plaintiff's possession or ownership of suit property must issue and I grant the same.

No.2 – a declaration should issue against the respondent directing it to discharge the charge registered in its favour against suit property No. L.R. 209/138/44. I hereby make such declaration.

No. 3 – should the respondent fail to comply with orders for discharge of charge the Deputy Registrar of High Court is hereby authorized to execute all documents to effect discharge of the aforementioned charge. I hereby order and authorize the Deputy Registrar to execute and .....

No.4 – the respondent shall have the costs of this suit. It is so ordered. The reasons are that when the orders of High Court were issued on 12.3.1997 the charge in favour of the respondent was invalidated and therefore the respondent's loan to the third party was left unsecured. The respondent can follow the estate of the deceased debtor but has no rights of a chargee.

I have perused the authorities tendered by the parties and I am of the view that each case is to be decided on its own merits. I find the facts of this case are supporting the orders hereby made.

**DATED and DELIVERED** at Nairobi this 28<sup>th</sup> day of August 2008.

**JOYCE N. KHAMINWA**

**JUDGE**