



REPUBLIC OF KENYA

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

**Civil Suit 263 of 2006**

WHEAT & BARLEY FIELDS LIMITED ..... PLAINTIFF

VERSUS

RUTH DAMARIS WAMBUI MBIYU ..... 1<sup>ST</sup> DEFENDANT

DAVID NJUNU MBIYU ..... 2<sup>ND</sup> DEFENDANT

MARGARET NJERI MBIYU ..... 3<sup>RD</sup> DEFENDANT

EDDAH WANJIRU MBIYU ..... 4<sup>TH</sup> DEFENDANT

ISAAC NJUNU MBIYU ..... 5<sup>TH</sup> DEFENDANT

IMPULSE DEVELOPERS LIMITED ..... 6<sup>TH</sup> DEFENDANT

**RULING**

In this application, dated 17<sup>th</sup> March, 2006, the Plaintiff Applicant seeks an order restraining the Defendants from

***“parting with, dealing with, disposing of, wasting, alienating, interfering with the quiet possession of the plaintiff or in any other way dealing with LR. No. 8669/3 pending the hearing and determination of this suit.”***

on the following grounds:

***(a) The plaintiff has entered into a lease agreement dated 1<sup>st</sup> May 2005 with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants as administrators of the estate of the late Mbiyu Koinange over LR. NO.8669/3 belonging to the said estate.***

***(b) The plaintiff leased for a period of 3 years with effect from 1<sup>st</sup> May 2005 with an option to renew and with the plaintiff enjoying the first option to purchase, under the terms of the lease.***

***(c) The defendants have evinced an intention to unilaterally terminate and breach the lease agreement dated 1<sup>st</sup> May 2006 by purporting to sell the suit property LR. No. 8669/3 to the 6<sup>th</sup> defendant.***

*(d) The plaintiff on assurance of the terms of the lease has extensively developed the suit property and sublet portions of the property LR. No. 8669/3 to third parties as is provided under the lease agreement dated 1<sup>st</sup> May, 2005.*

*(e) The defendants have in complete disregard of the lease agreement dated 1<sup>st</sup> May 2005 threatened to dispose of LR. No. 8669/3 and evict the plaintiff therefrom unless restrained by this Honourable Court.*

Ms. Migiro, Counsel for the Plaintiff, submitted before this Court that the Plaintiff has a valid lease, although not registered at the Lands Office, with the Fifth Defendant, acting on behalf of all the first four Defendants, entitling it to possession of the suit land; that the purported sale and transfer of the suit land is invalid because (i) the transferor, Settlement Fund Trustees, had no capacity to transfer as it is not the owner of the suit land, and (ii) this being agricultural land, the transfer requires consent of the Land Control Board (LCB), which had not been obtained; and that the balance of convenience tilted in the Plaintiff's favour because it had sub-leased the premises to third parties. She concluded her submission with the argument that damages would not be an adequate remedy.

Mr. Kingara, Counsel for the Sixth Defendant, submitted that the suit land has already been transferred to the Sixth Defendant, pursuant to an order of the Court authorizing transfer; that the Sixth Defendant had no prior notice of the Plaintiff's lease; that in any event the purported lease is invalid as it was executed by a non-existing party; and that Settlement Fund Trustees do not require consent of LCB.

Mrs. Kariuki, for the Second, Third and Fourth Defendants, also opposed the application, arguing that the lease was entered into by the Fifth Defendant without the consent of the Administrators, and was therefore invalid.

Having heard submissions and perused the depositions filed before this Court, I am satisfied that the Plaintiff has **not** made out a prima facie case with a probability of success, and is **not** entitled to the orders sought. There are serious questions here whether the Fifth Defendant had indeed any authority to enter into the lease. In any event, the lease was executed by a non-existing party, as the Plaintiff Company was not in existence at the time it purported to execute the lease. There is no new or fresh agreement between the parties ratifying the contract made by the non-existing party. Accordingly, in my view, the lease is invalid in law. Finally, the suit land has been sold and transferred to a third party, the Sixth Defendant herein who has sworn that he purchased the same without notice of the existence of the lease. The transfer to the Sixth Defendant has been authorized by the Court.

**Accordingly, I find that the Plaintiff has not established a prima facie case with probability of success, and I dismiss this application with costs to the Second, Third, Fourth and Sixth Defendants/Respondents.**

Dated and delivered at Nairobi this 6<sup>th</sup> day of March, 2007.

**ALNASHIR VISRAM**

**JUDGE**