



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**

**Civil Suit 209 of 2005**

**CONTINENTAL CREDIT FINANCE LIMITED (In liquidation).....PLAINTIFF**

**VERSUS**

**ISAAC GATHUNGU WANJOHI .....1ST DEFENDANT**

**IGAINYA LIMITED.....2ND DEFENDANT**

**THE PRINCIPAL REGISTRAR OF TITLES.....3RD DEFENDANT**

**RULING**

The plaintiff by its plaint filed herein on 20th April 2005 seeks permanent injunction to stop the registration of the transfer of property L.R. NO. 209/81961 Nairobi comprised in the Grant Number I.R. 2771 to the 1st and 2nd defendants, and further to stop the said 1st and 2nd defendants from collecting rent from the aforesaid property (herein after called the suit property The plaintiffs by its application, by way of a chamber summons, dated 20th April 2005 seeks temporary injunctions in terms of the prayers in the plaint stated herein above. The background of this matter is that the suit property was charged to the plaintiff, as security, by Alfa Investment Limited.

The said Alfa Investment Limited failed to pay the plaintiff the principal and interest due. With a view to settling the amount due to the plaintiff, the said Alfa Investment Ltd requested the plaintiff to collect rent of the 10 maisonettes erected on the suit property. Sometimes in July 2001 the plaintiff appointed the 2nd defendant as its agent to collect the aforesaid rent. On behalf of the plaintiff it was submitted that the original title of the suit property was in the possession of firm of advocates Hamilton Harrison & Mathews who forwarded it to the official receiver on or about 13th December 2002.

The record of the official receiver revealed later that the said title was never received in their office and seems to have been lost in transit. As a consequence of that loss the Official Receiver applied for issuance of a provisional certificate of title. It later transpired that the original Grant was in possession of the 1st and 2nd defendants and it was alleged on behalf of the plaintiff that the said Grant was obtained by the 1st and 2nd defendant by fraudulent and illegal means. That the official receiver reported the said possession to the Criminal Investigation Department. To date the said defendants have continued to collect rent of the suit property.

That before this suit the 1st and 2nd defendants had attempted to register the transfer in their favour but that attempted transfer did not comply with section 27 Registered Titles Act (Cap 281), for lack of memorial by the registrar. The defendants on their part submitted that a public auction was convened on 19th September, 1990 whereby the suit property was purchased by a company called Jamu Impex Enterprises Ltd, who in turn for a consideration of kshs 8, 000, 000 assigned their rights as purchasers to

the defendants. That the defendant paid Jamu Impex Enterprises Ltd kshs 8, 000, 000 for transmission to the plaintiff. That in the year 2001 criminal charges against officers of official receiver were preferred for uttering false document, amongst them being the Grant relating to the suit property,. That the court's verdict was of not guilty. The defendants have in possession of the suit property since July 2001.

That the official receiver's actions are to illegally disposes the defendants ownership of the suit property. I have considered the submissions presented before me and the application and the affidavits hereof. It is not my place, at this interlocutory stage of these proceedings to make any final finding of the rivalry submissions. After due consideration, however, of that evidence I find that it is just to issue a temporary injunction to stop the registration of the transfer until the final determination of the issues in this suit.

The court will need to determine at the hearing of this suit whether indeed a sale did take place of the suit property in 1990 and if so whether the right of a purchaser was assigned to the defendants. In my examination of the evidence I find that I have doubt whether such a sale did take place and for that reason alone it is important to halt the registration of the transfer. I am satisfied the registrar had not entered a memorial, as required by section 27 Registered of Titles Act and accordingly the transfer is unregistered – see section 32 Registered of Titles Act. That being my finding I hesitate not in granting the following orders: -

**(1) That an order is hereby issued of Temporary injunction restraining the 1st and 2nd defendants by themselves, their agents, employees, servants or any one claiming under them howsoever, from registering the transfer of that parcel of land known as Land Reference Number 209/8161 Nairobi and comprised in the grant number I.R. 27771 pending the hearing and determination of this suit.**

**(2) That an order is hereby issued of Temporary injunction restraining the 1st and 2nd defendants by themselves, their agents, employees, servants or anyone claiming under them howsoever from demanding, collecting from and/or accepting receipt of any rent from the tenants residing in the premises erected on the property known as Land Reference No. 209/8161 Nairobi and comprised in the Grant Number I.R. 27771 pending the hearing and determination of this suit.**

**(3) A mention date will be given to the parties at the reading of this ruling to enable the parties agree on the person or company that shall be appointed to collect the rent of the suit property. Failure of the parties to agree the court will make the appointment thereof.**

**(4) The costs of the chamber summons dated 20th April 2005 shall abide with final determination of this suit; that is costs in the cause.**

Dated and delivered this 21st day September 2005.

**MARY KASANGO**

**JUDGE**