



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT NO. 436 OF 2017

JOHN MUGAMBI T/A MUGAMBI & COMPANY ADVOCATES.....1ST APPLICANT

BEATRICE KARIUKI T/A BEATRICE KARIUKI & ASSOCIATES....2ND APPLICANT

VERSUS

SHOWCASE PROPERTIES LIMITED.....1ST RESPONDENT

FRANCIS MUHORO GACHANJA.....2ND RESPONDENT

PAUL KINUTHA GACHANJA (sued as the administrator

of the estate of the late BILHA NJERI GACHANJA (Deceased).....3RD RESPONDENT

NEWTON CHEGE.....4TH RESPONDENT

RUTH WANJIRU GACHANJA.....5TH RESPONDENT

KENYA COMMERCIAL BANK LIMITED.....6TH RESPONDENT

RULING

1. Even with the best of effort the Orders sought in the Motion of 23rd October 2017 cannot be granted.

2. Briefly stated, the Plaintiffs' case is that they were retained by the 1st Defendant to undertake some Legal work for which fees is due to the 1st Plaintiff in the sum of Kshs.28,063,325.00 as at 8th June 2011 and Kshs.27,626,840 to the 2nd Plaintiff as at 5th June 2015. The 2nd to 5th Defendants are Directors of the 1st Defendant Company and are said to have guaranteed the payment of that fees. The 6th Defendant is the Bank which is said to have provided some finances part of which were to settle the outstanding legal fees on the promise of the 1st Defendant. The Notice of Motion dated 23rd October 2017 is for the following Orders:-

1. *Spent*

2. THAT pending the hearing and determination of this application inter partes, an order do issue restraining the Defendants, its agents, assigns, servants and any other persons howsoever from selling, transferring, charging, interfering with, leasing, sub-leasing, alienating, disposing off or in any other way dealing with Land Reference Number 2/61, Kilimani Area.

3. THAT pending hearing and determination of this suit, an injunction restraining the Defendants, its agents, assigns, servants and any other persons howsoever from selling, transferring, charging, interfering with, leasing, sub-leasing, alienating, disposing off or in any way dealing with Land Reference Number 2/61, Kilimani Area.

4. THAT this Honorable Court be pleased to declare Mugambi & Company Advocates and Beatrice Kariuki & Associates, previously on record for the 1st to 5th Respondents herein in Nairobi High Court Commercial Case No. 577 of 2011: Showcase Properties Limited versus Bamburi Special Products Limited entitled to a charge or lien for Kshs.55,690,065.00 on the amount advanced by the 6th Respondent to the 1st Respondent herein pursuant to the Third Further Charge dated 12th January 2017 and order that the 6th Defendant/Respondent to pay the same to the 1st and 2nd Applicants to deduct their outstanding legal fees and

disbursements.

5. THAT a conservatory order be issued against the 6th Defendant/Respondent restraining it by itself, and or servants from disbursing or releasing the monies advanced to the 1st Plaintiff/Respondent pursuant to a Third Further Charge dated 12th January 2017 and which monies are held pursuant to a Kenya Commercial Bank loan account No. MG1028100166 and/or the 1st Defendant/Respondent's current account with the 6th Defendant/Respondent until the hearing and determination of the Application herein.

6. THAT the Chief Lands Registrar be directed to register any orders issued herein concerning the property known as Land Reference Number 2/61, Kilimani Area against the title for the aforementioned property.

7. THAT the costs of this application be provided for.

3. At least two issues make the Orders sought in the Motion untenable. First, it is acknowledged even by the Plaintiffs that a Charge has been registered over Land Reference Number 2/61 in favour of the Bank and so injunctive Orders sought over the property have been overtaken by that event.

4. Secondly the Bank has explained its relationship to the 1st Defendant. The Bank has stated that the funds advanced to the 1st Defendant are from Bank One Limited of Port Louis Mauritius and that the 6th Defendant has made a non-funding based facility being a guarantee by the 6th Defendant to the Lender (Bank One Limited). In essence that no monies are passing from the 6th Defendant to the 1st Defendant. No evidence is placed before Court to disprove this alleged arrangement. For that reason there is no money over which a Charge or Lien can issue or whose disbursement can be injuncted.

5. The Motion of 23rd October 2017 is dismissed with costs.

Dated, Signed and Delivered in Court at Nairobi this 13th day of July, 2018.

F. TUIYOTT

JUDGE

PRESENT:

Ndirangu for 1st and 2nd Respondent

Waweru h/b for 1st and 2nd Applicant

Nixon - Court Assistant

Kwanza h/b Wetangula for 6th Respondent