



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL SUIT NO. 3462 OF 1995

OFFICIAL RECEIVER & LIQUIDATOR OF

CONTINENTAL CREDIT FINANCE LIMITED...1ST PLAINTIFF

KISAUNI PROPERTIES LIMITED.....2ND PLAINTIFF

VERSUS

ZAVERCHAND RAMJI SHAH.....1ST DEFENDANT

REGISTRAR OF TITLES, GOVERNMENT

LAND REGISTRY NAIROBI..... 2ND DEFENDANT

JARED BENSON KANGWANA.....3RD DEFENDANT

SHEIKH SALIM MOHAMMED BALALA.....4TH DEFENDANT

THEOFILO MUCHIRI.....5TH DEFENDANT

PETER MIRIIE ZAKAYO.....6TH DEFENDANT

LAWRENCE M. MBAABU T/A

L.M. MBAABU & CO ADVOCATES.....7TH DEFENDANT

AND

SUSAN SALMA

SCHIELE.....1ST PROPOSED INTERESTED PARTY/APPLICANT

WHITE MEG INDUSTRIES

LIMITED.....2ND PROPOSED INTERESTED PARTY

M.KHODA INVESTMENTS

LIMITED.....3RD PROPOSED INTERESTED PARTY

RULING

1. Susan Salma Schiele, the proposed 1st interested party herein, took out the motion dated 8.11.2011 in which she sought for the following orders:

1. THAT this application be certified urgent, service thereof be dispensed with and the same be heard ex-parte in the first instance owing to its urgency;

2. THAT leave be and is hereby granted to SUSAN SALMA SCHIELE to be enjoined in this suit as an Interested Party.

3. THAT leave be and is hereby granted to SUSAN SALMA SCHIELE to enjoin WHITE MEG INDUSTRIES LIMITED and M. KHODAINVESTMENTS LIMITED in this suit as Interested Parties.

4. THAT the consent order recorded in this suit on 9th August 2010, the court order dated 11th August 2010 ensuing therefrom and the subsequent vesting order issued by this court on 25th January 2011 to give effect to the said consent orders in as far as they relate to the parcel of land known as LR. 4242/42 be and are hereby set aside.

5. THAT the 1st Defendant and the 2nd and 3rd Interested Parties be and are hereby restrained by themselves, their servants, agents or by any person claiming under or through them from disposing off and/or interfering in any manner whatsoever with the 1st Interested Party's/applicant's quiet possession of LR No 4242/42 Nairobi and all the improvements thereon.

6. THAT the 2nd Defendant do expunge from the lands record all entries in the Lands Register for the parcel of land known as LR. NO.4242/42 subsequent to the Vesting order issued by this court on 25th January 2011 and reinstate all the entries existing on the Lands register for the said parcel of land prior thereto.

7. THAT pending the hearing and determination of this application, this honourable court be pleased to issue an interim order of injunction in terms of prayer 5 hereinabove.

2. When served with the 1st, 5th and 6th defendants filed a replying affidavit sworn by Mr. Milton Imanyara, their advocate to resist the motion. The 1st Defendant too filed a replying affidavit he swore to oppose the application.

3. The Defendants filed three further affidavits to buttress their objection to the motion. Virian Chandra Shah filed an affidavit on behalf of M. Khoda Investments Ltd, the proposed 3rd Interested Party to oppose the application.

4. The Official Receiver, the 1st Plaintiff, filed the further replying affidavit of Patrick Thoithi Kanyuira to also oppose the motion. Learned counsels appearing in the matter recorded a consent order to have the motion disposed of by written submissions. The motion was heard and partially determined in favour of the 1st proposed Interested Party by Hon. Mr. Justice Hatari Waweru. The Honourable Judge granted prayers 2 and 3 and left prayers 4, 5 and 6 to be determined later. The 1st and 2nd plaintiffs pursuant to the motion dated 3rd June 2013 successfully had the ruling of Justice Hatari Waweru delivered on 18/9/2012 reviewed and set aside on the basis that the Hon. Judge inadvertently did not take into account the replying affidavit of Zavechard Ramji Shah sworn on 17th March 2012. This court directed the application dated 8th November 2011 to be heard afresh.

5. I have considered the grounds set out on the face of the motion plus the facts deponed in the affidavits filed in support and The 1st Defendant further argued that on account of that admission, the consent order

was recorded in this suit whereby the 3rd and 4th Defendants were dropped as defendants. The 1st Defendant denied committing any fraud, coercion or undue pressure in entering into the consent but was under a honest belief that entering the consent would meet the ends of justice.

6. It is the submission of Mr. Thiga learned advocate for the proposed 1st Interested Party that the consent order affected interests of third parties who were not parties to the suit and consent. It is his argument that they should have been consulted or been involved in the crafting of the consent order to have the matter settled.

7. Mr. Imanyara learned advocate for the 1st, 5th and 6th Defendants was of the view that the 1st proposed 1st Interested Party was aware of the existence of this suit since an injunction which was later discharged. Mr. Imanyara pointed out that the proposed 1st Interested Party obtained title to the suit premises while she was aware of the pending of this suit hence she is affected by the doctrine of Lis Pendens under Section 52 of the Interested Party Act.

8. After a careful consideration of all the material and submissions presented to this court, I have come to the conclusion that the proposed interested parties are necessary parties to this suit. The proposed 1st Interested Party's interest over LR No. 4242/42 Nairobi was interfered with by a consent order which she was not a party to. I hereby grant prayers 2 and 3 of the Notice of Motion thus enjoining Susan Salma Schiele, White Meg Industries Ltd and M. Khoda Investments as the 1st, 2nd and 3rd Interested Parties respectively. Having given the aforesaid orders, I now turn my attention to the rest of the prayers 4, 5, 6 and 7 of the motion. The 1st Defendant has raised serious allegations against the 3rd and 4th Defendants by indicating that the duo dropped out of these proceedings when they realized some fraudulent activities taking place. Having allowed the Interested Parties to come on board, I think there is need for parties to consider whether or not the 3rd and 4th Defendants should be reinstated to this suit so that they too can participate in questioning the consent order.

9. For the above reason I decline at this stage to make any determination on prayers 4, 5, 6 and 8 until the parties decide on the participation of the 3rd and 4th Defendants in these proceedings. However pending further orders and directions, I grant prayer 7 to last until 29/5/2015 when this matter is fixed for mention for further orders and directions as envisaged herein above.

Costs shall be in the cause.

Dated, Signed and Delivered in open court this 8th day of May, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant