



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. 414 OF 2003

TABITHA WANGECHI NDERIT U

(Suing as Next Friend to

SIMON NDERITU KARIUKI).....PLAINTIFF

VERSUS

1. SURAJ PLAZA LIMITED

2. MANJI DHANJI HALAI

3. KANTILAL DHANJI HALAI

4. KALYAN DHANJI HALAI.....DEFENDANTS

CONSOLIDATED WITH

HCCC NO. 1262 OF 2002

TABITHA WANGECHI NDERITU

(Guardian ad litem to SIMON NDERITU)PLAINTIFF

VERSUS

1. SURAJ PLACE LTD

2. DHANJI MANJI KARSANDEFENDANTS

RULING 'B'

1. The Plaintiff in these two suits which were consolidated has a judgment in her favour delivered on 30th August 2011. The terms of that judgment were –

“(a) A declaration that the conveyance and transfer of title L.R. No. 209/1240 to Suraj Plaza was a forgery, irregular, void and a nullity.

(b) An order that the said conveyance be cancelled and the title restored to Simon Nderitu Kariuki.

(c) A declaration that any transfer of Simon Nderitu's shares to the 2nd defendant was irregular.

(d) Restoration of 45% shares in the 1st Defendant to Simon Nderitu Kariuki."

2. The Defendants' application for stay of execution of decree pending appeal by notice of motion dated 29th September 2011 was subsequently refused by this court in a considered ruling dated 4th and delivered on 6th July 2012. It is common ground that thereafter the Plaintiff was restored into ownership of land parcel LR No. 209/1240.

3. The Defendants then filed **notice of motion dated 13th July 2012**. They sought the main order for stay of execution and/or injunction pending hearing and determination of their appeal against the decree of this court (**Court of Appeal Civil Appeal NO. 270 of 2011**).

4. Stay of execution was refused as already indicated. The same issue cannot be canvassed again in this fresh application. But the court no doubt has jurisdiction to grant an appropriate injunction pending disposal of the appeal.

5. It turned out at the hearing of the application that what the Defendants seek is to preserve the suit property pending disposal of their appeal. The order sought then is to prohibit the Plaintiff from selling, transferring, or otherwise disposing of the suit property pending disposal of the appeal.

6. In her turn the Plaintiff indicated that she has no intention at all of selling, transferring or otherwise disposing of the suit property having fought so long and hard to restore title thereof unto her husband's name. I interpret this to mean that the Plaintiff has no serious objection to the injunction sought pending disposal of the appeal. **I will therefore grant a temporary injunction to restrain the Plaintiff from selling, transferring, or otherwise disposing of land parcel LR No. 209/1240 pending disposal of Court of Appeal Civil Appeal of 270 2011.**

7. The Plaintiff herself filed **notice of motion dated 3rd of October 2013** which was heard together with the Defendant's application just now dealt with. The application seeks four main orders as follows –

(i) That the **Registrar of Companies** be directed to restore the 45% shares due to **Simon Nderitu Kariuki** in the 1st Defendant, **Suraj Plaza Limited**, by transferring the same from among the shares currently held by the 2nd Defendant, **Kantilal Dhanji Halai** in satisfaction of the decree of 30th day of August, 2011.

(ii) That the Defendants do file in court audited accounts of the 1st Defendant for the period 1998 to December, 2012 within fourteen (14) days of the order.

(iii) That the Defendants do file in court the schedule of assets and liabilities of the 1st Defendant within fourteen of the the order.

(iv) That the Court be pleased to issue any other order that it may consider appropriate in the circumstances, so as to ensure that the decree passed on 30th August, 2011 is implemented, and the said Simon Nderitu Kariuki be able to participate in the affairs of the 1st Defendant and benefit from his 45% shareholding therein.

8. If we recall the precise terms of the judgment entered in favour of the Plaintiff on 30th August 2011, it is apparent that only the prayer relating to the shares in the 1st Defendant can be entertained by the court in this application by the Plaintiff. The prayer relating to audited accounts of the 1st Defendant for the

period between 1998 to December 2012 is misconceived in that no such relief was granted in the judgment. Likewise there was no relief granted in respect to the assets and liabilities of the 1st Defendant; the prayer seeking an order in respect thereof is equally misconceived.

9. As for the last prayer, in this day and age an invitation for the court

“to issue any other order that it may consider appropriate in the circumstances so as to ensure the decree of the court made on 30th August 2011 is implemented (to enable the Plaintiff) to participate in the affairs of the 1st Defendant and benefit from his 45% shareholding therein”

does not sit well with the court. It is the Plaintiff’s duty to seek a precise order as she may deem fit instead of transferring that responsibility to the court.

10. Reverting back to the prayer to direct the *Registrar of Companies* to restore the 45% shares due to *Simon Nderitu Kariuki* in the 1st Defendant, it is to be noted that there is no stay of execution of the decree, the same having been refused as already noted. In the circumstances, **I will grant prayer 2 of the notice of motion dated 3rd August 2013.** It is so ordered. The parties shall bear their own costs of the two applications.

DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF JUNE, 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 11TH DAY OF JUNE, 2014