



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 597 OF 2012

ECOBANK KENYA LIMITED.....PLAINTIFF/CHARGE

VERSUS

ATTAIN ENTERPRISES LIMITED.....DEFENDANT/CHARGER

ROGAM INVESTMENTS LIMITED.....DEFENDANT/CHARGER

R U L I N G

1. The **Notice of Motion** before the court is dated **20th November 2012**. It is expressed filed under Order 28 Rule 7 of the Civil Procedure Rules, 2010, Sections 1A, 1B and 3A of the Civil Procedure Act and all enabling provisions of the law.

2. The application seeks the orders that:-

1. That this Honourable court be pleased to issue a Commission directed at the Commissioner of Lands and/or the Chief Lands Registrar to investigate, ascertain and deliver to this Honourable Court a report with finding as to the historical and present ownership of all that property known as LR. Number 20777.

2. That this Honourable Court do limit time within which the Commissioner of Lands and/or the Chief Lands Registrar should comply with the terms of the Commission sought at prayer 1 hereinabove.

3. That there be liberty to apply.

3. The application is premised on grounds set out thereon:-

a. The Plaintiff holds a Charge in respect all that property known as LR Number 20777 which was created to secure a financial facility in the sum of Kshs.6,000,000.00 advanced to the Defendant.

b. The Plaintiff statutory power of sale in respect of all that property know as LR. Number 20777 has arisen but the Plaintiff has been unable to exercise the same as the Interested Party now alleges to have a proprietary interest over the same property and there is thus a dispute as to ownership of the subject property.

c. There are two title documents in respect of the suit property and efforts to have the Commissioner of Lands and the Chief Land Registrar to establish the real and actual ownership of the suit property have not bore any fruits as the said officers have ignored and/or failed to attend to any of the requests hence the application.

d. That the Commissioner of Lands and Chief Lands Registrar are the officers mandated by the law to register, rectify any interest on immovable property within the jurisdiction of this Honourable Court of the one part and also retain records as historical ownership of such property.

e. The issuance of the Commission sought shall enable the court o utilize its resources in a just and fair manner and ensure the efficient disposal of the business before it.

f. Other goods and reasons to be adduced at the hearing hereof.

4. The application is supported by affidavit of **M/S MADELINE MUGANE** dated **20th November 2012** with annexures thereto. That affidavit expounds upon the said grounds.

5. By a consent filed in court on 15th March 2013 this application was allowed as between the Plaintiff/Applicant and the Interested Party. The application is however still pending as between the Defendant and the Plaintiff, hence this determination.

6. The Defendant has not opposed the application. A Hearing Notice for the application was served upon the Defendant's advocates and was received on 19th May 2014. The Applicant filed an Affidavit of Service on 23rd May 2014, and being satisfied I allowed the Applicant to proceed with the matter *ex-parte*.

7. I have carefully considered the application. The Plaintiff is in the process of executing its statutory power of sale over the suit property but cannot do that because the same property is also being claimed by the Interested Party, who alleges that it has a Provisional Certificate of Title issued to it on 21st November 2006 on the strength of which it claims the suit property was transferred to it by a Mr. Simeon Saimanga Lesirima. Clearly, there is a need for the clarification of who is the actual owner of the suit property. The Commissioner of Lands and the Chief Lands Registrar have not acted to resolve the problem even though it is clear that the Plaintiff has severally sought their intervention.

8. Since the orders sought shall not prejudice the Defendant or the Interested Party, I believe those orders are necessary to compel the Commissioner of Lands and the Chief Lands Registrar to act.

9. In the upshot, I allow the Notice of Motion dated 20th November 2012 as prayed and direct that the Commissioner of Lands and/or the Chief Lands Registrar shall comply within Order 1 thereof within 30 days from the date of this Ruling.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY 2014

E. K. O. OGOLA

JUDGE

PRESENT:

Ondati for Plaintiff/Chargee

No appearance for Defendants/Chargees

Teresia – Court Clerk