

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA NAIROBI

CIVIL DIVISION

CIVIL SUIT 5402 OF 1993

PRINCE ENTERPRISES.....PLAINTIFF

VERSUS

PRESTIGE DEVELOPERS LIMITED.....DEFENDANT

ALNOOR ABDULSULTAN HASSANALIINTERSETED PARTY

NASREEN KAUSER A. SATAR CHANDU.....ADDED PARTY

RULING

By its Notice of Motion of the 10/2/2003 the Applicant seeks the following orders: 1. THAT pursuant to the judgment delivered by this court (Mr. Justice Ransley) on 18th December 2002 and upon payment into court by the Plaintiff of the sum of Kshs 2,000,000 being the balance of the purchase price payable under the Sale Agreement dated 6th May 1993 and made between the Plaintiff as purchaser and the Defendant as vendor of Villa No. 7 situated on the property known as L.R No. 1870/111/140 the Registrar of this Honorable Court be authorized to execute the lease for the same in terms of the draft lease annexed hereto.

2. THAT caveat registered as L.R No. 54743/20 on 13th January 1994 against Villa No. 7 situated on the property known as L.R No. 1870/111/140 by the interested Party claiming a purchase's interest in the said villa be removed. The orders sought are pursuant to my judgment herein of the 18/12/2002 whereby I ordered specific performance of a sale agreement between the Plaintiff and the Defendant. Mr. Wandabwa for the added party opposed the application on the grounds that the orders sought would affect the interest of the added party. He relied on the case of The Town Council of Ol'Kalau Vs Nganga General Hardware C.A No. 269 of 1997.

The added party is the widow of her late husband Almor Abdul Sultan Hassan Mohammed who was joined in this suit as an interested party. As the interested party he took no part in this matter nor sought to be joined as a Defendant. The interested party and now the added party were at all material times and still are in possession of the suit premises. They are there by virtue of an agreement to purchase the suit premises which the interested party alleged he entered into with the Defendant. The position now is that the Applicant herein has an order for specific performance of the suit premises against the Defendant and the added party is in possession as an administrator of her late husband by virtue of what is claimed to be completed agreement sale.

Mr. Wandabwa further submitted that the registration of a lease in favor of the Applicant would affect the caveat in favor of the added party and that the court had no power to remove it. In this respect he relied on Mwangala Vs Bandali [1984] KLR 751 and Wagiciengo Vs Gerrard [1982] KLR 336 At present apart from being in possession and her husband having lodged a caveat against the title to the property the added party has no registered title to the suit premises. It is not for this court to determine which of the competing claims of the Applicant and the added party is correct.

The Applicant has advanced its cause by getting an order for specific performance. I see no reason why this order should not be implemented and the lease in its favor registered. However, the added party is entitled to the benefit of the caution lodge by her late husband against the title to the suit premises. In the

result I grant the orders asked for but the lease in favor of the Applicant will be subject to the caveat in favor of the added party which remains on the register. It is up to the parties in due course to sort the position out but that is of no concern to this court now. The applicant will have the costs.

DATED and DELIVERED at NAIROBI on 4th July 2005

P.J RANSLEY

JUDGE