



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 75 OF 2018

ELIZABETH NAIRUKO MURUNTOI NKURUMWA.....PLAINTIFF

-VERSUS-

RICHARD MANCHA SURURU.....1ST DEFENDANT

EQUITY BANK LIMITED.....2ND DEFENDANT

KEYSIAN AUCTIONEERS.....3RD DEFENDANT

RULING

The Application before me is the Notice of Motion dated 14th December, 2017 which was brought under Order 40 Rule 1 Order 51 Rule 1 of the Civil Procedure Rules for orders that: -

1. Pending the hearing and determination of this application interparties this court be pleased to issue an injunction restraining the Defendants herein whether by themselves, their agents and/or servants from offering for sale, advertising, selling or transferring all that parcel of land registered as LR NO. CIS MARA/ENTIAN/579.
2. Pending the hearing and determination of this suit, the court be pleased to issue an injunction restraining the Defendants herein whether by themselves, their agents and/or servants from offering for sale, advertising, selling or transferring all that parcel of land registered as LR NO. CIS MARA/ENTIAN/579.
3. Costs of this application be in the cause.

The application was based on the grounds that the Plaintiff is the wife of one Muruntoi Kirampa who was the registered owner of land parcel No. CIS MARA/ENTIAN/579 which parcel of land was changed to the 2nd defendant as a security for loan and that the Applicant did not give her consent as the spouse of the chargor to have the suit parcel obtained and that the land is also her matrimonial home. The applicant further contends that she was not informed that the 1st Defendant who was granted the loan had defaulted.

The Applicant contend that non-compliance with Mandatory Provision Section 28 of the Land Registration Act, 2012 for lack of spousal consent renders the charge invalid null and void.

The Application was supported by the Affidavit of the applicant.

The Application was opposed by the 2nd Respondent who filed a replying affidavit.

I wish not to discuss the merit of the application as I find that subsequent to the decision of the supreme court in case of **REPUBLIC - VERSUS- KARISA CHENGO & 2 OTHERS(2017)EKL R** this court lacks the jurisdiction to hear the matter as the predominant claims in respect of a charge being challenged IS on the account of lack of spousal consent and from the decision from the same court it falls within the jurisdiction of the Commercial Division and in the circumstances I find that the court lacks jurisdiction to hear the matter herein and I thus transfer the same to High Court Commercial Division.

DATED, SIGNED and DELIVERED in open court at NAROK on this 23rd day of July, 2019

Mohammed Kullow

Judge

23/7/19

In the presence of:-

Mr Kiptoo holding brief for Kyala for the 2nd and 3rd respondent

N/A for the Plaintiff

CA:Chuma/kimiriny