

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC SUIT NO. 380 OF 1994

FORMERLY HIGH COURT CIVIL SUIT NO. 298 OF 1994

CARLOS SANTOS LAZANO.....PLAINTIFF

VERSUS

M. K. NDAU T/A NDAMPER ENTERPRISES.....1ST DEFENDANT

HOUSING FINANCE COMPANY.....2ND DEFENDANT

DOMIZIANO KABURU NJERU.....3RD DEFENDANT

HARUN WAKANENE MBUTHIA.....4TH DEFENDANT

RULING

I have considered the 4th defendants application dated 17th July, 2018 together with the affidavits sworn in support thereof by the 4th defendants legal representative and her advocate Mr. John Kingori Kariuki in support of the application. I have noted that contrary to the assertion by the 4th defendant that there is a caveat that was registered against the title of the suit property by the plaintiff. What was registered against the title of L.R No. 1160/290 was a court order issued by the Court of Appeal in Nairobi Civil Application No. NAI. 218 of 1998. This is the caveat that the 4th defendant has sought to lift. I am unable to accede to the 4th defendant's application for the simple reason that the order sought to be lifted was not issued by his court but by the Court of Appeal. Thus court has no power to set aside, discharge or lit the orders issued by the Court of Appeal. As I pointed out to the 4th defendant's advocate during the hearing of the application, the application before me should have been made in the court of Appeal in Nairobi Civil Application No. NAI. 218 of 1998 where the order that was registered against the title of the suit property was made. It is the court of Appeal that made the order and it is the same court that has the power to set it aside. For the foregoing reasons, I find no merit in the Notice of Motion dated 17th July, 2018. The application is dismissed with costs to be in the cause.

Delivered and Dated at Nairobi this 1st day of November 2018

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

No appearance for the Plaintiff

No appearance for 1st, 2nd and 3rd defendants

Mr. Muriithi h/b for Kingori for 4th Defendant

Catherine - Court Assistant