



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC NO.380 OF 2017**

**(FORMERLY HCCC NO.298 OF 1994)**

**CARLOS SANTOS LOZANO..... PLAINTIFF**

**VERSUS**

**1. M.K.NDAU**

**2. NDAMPER ENTERPRISES**

**3. HOUSING FINANCE COMPANY LTD.**

**4. DOMIZIANO KABURU NJERU**

**5. HARUN WAKANENE MBUTHIA..... DEFENDANTS**

**RULING**

The Plaintiff brought this suit against the defendants on 25<sup>th</sup> January 1994. Together with the plaint, the plaintiff filed an application by way of Chamber Summons of the same date seeking among others, an order restraining the Registrar of Titles from registering or effecting the transfer or any dealings with L.R. No. 1160/290 Nairobi and L.R. No. 13080 Nairobi pending the hearing and determination of the suit. The plaintiff's application was heard ex parte in the first instance by Pall J. who made an order on 25<sup>th</sup> January 1994 restraining the Registrar of Titles from registering the transfer which had been lodged with him under Day Book Number 267 on 18<sup>th</sup> January 1994.

The Plaintiff extracted the order and caused it to be registered against the title of L.R. No. 13080 Nairobi on 27<sup>th</sup> January 1994 which by then was registered in the name of the 3<sup>rd</sup> defendant. The plaintiff's application was heard inter partes and dismissed as against the 3<sup>rd</sup> defendant on 3<sup>rd</sup> May 1994 by Ole Keiwua J. In the ruling by Ole Keiwua J., the court declined to grant injunction in relation to L.R. No. 13080 Nairobi. In my view, the said ruling discharged the ex parte order which had been issued by Pall J. in favour of the plaintiff on 25<sup>th</sup> January 1994. From the date of that ruling there was no longer any justification for maintaining the said order against the title of L.R. No. 13080 Nairobi.

For the reasons which are not clear from the record, the order by Pall J. aforesaid remained registered against the title of L.R. No. 13080 Nairobi. The plaintiff's suit was heard and dismissed by Mbitio J. on 10<sup>th</sup> September 1998. The plaintiff was dissatisfied with the said decision and filed an application in the Court of Appeal namely, Civil Application No.NAI. 218 OF 1998(UR.88/98) seeking interlocutory

injunction restraining the defendants herein from transferring, alienating, charging, disposing of or in any other way dealing with L.R. No. 1160/290 Nairobi and L.R. No. 13080 Nairobi pending the hearing and determination of the appeal he intended to file.

The Court of Appeal heard the application and dismissed the same as against the 3<sup>rd</sup> defendant on 9<sup>th</sup> October 1998. The Court of Appeal held that the plaintiff had no cause of action against the 3<sup>rd</sup> defendant in relation to the sale to the 3<sup>rd</sup> defendant of L.R No. 13080 Nairobi. It is not clear from the record whether the plaintiff filed an appeal in the Court of Appeal after the dismissal of his application for injunction against the 3<sup>rd</sup> defendant. Mr. Isore informed me from the bar that no such appeal was filed.

What is now before me is the 3<sup>rd</sup> defendant's application dated 16<sup>th</sup> May 2017 seeking an order for the removal of a caveat that was registered against the title of L.R No. 13080 Nairobi on 27<sup>th</sup> January 1994 pursuant to the ex parte order of Pall J. which I have referred to above. The application was not opposed. In summary, the 3<sup>rd</sup> defendant has contended that the plaintiff's suit having been dismissed and the plaintiff having lost an application for injunction in the Court of Appeal as concerns L.R No. 13080 Nairobi, the continued maintenance of a caveat on the title of L.R No. 13080 Nairobi on the strength of the order of Pall J. which was made ex parte on 25<sup>th</sup> January 1994 aforesaid cannot be justified.

In view of the history of this suit which I have set out above, I am in agreement with the 3<sup>rd</sup> defendant that the caveat on the title of L.R No. 13080 Nairobi is unjustified. I find merit in the 3<sup>rd</sup> defendant's application dated 16<sup>th</sup> May 2017 which I hereby allow in terms of prayer 3 thereof.

**Delivered and signed at Nairobi this 21<sup>st</sup> day of July 2017**

**S. OKONG'O**

**JUDGE**

**Ruling delivered in open court in the presence of:**

N/A for the Plaintiff

Ms. Mwachiro for the 1<sup>st</sup> Defendant

N/A for 2<sup>nd</sup> Defendant

Mr. Orege for the 3<sup>rd</sup> Defendant

Mr. Mureithi h/b for Kingori for the 4<sup>th</sup> Defendant

Catherine Court Assistant



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