



Teleposta Pension Scheme Trustees Registered v Salat & 2 others (Environment & Land Case E046 of 2022) [2023] KEELC 17138 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17138 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E046 OF 2022**

**LN MBUGUA, J
APRIL 27, 2023**

BETWEEN

TELEPOSTA PENSION SCHEME TRUSTEES REGISTERED PLAINTIFF

AND

JOSEPHINE CHESANG SALAT 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

VERNONIA APARTMENTS LIMITED 3RD DEFENDANT

RULING

1. The notice of motion dated December 9, 2022 is for determination by this court. The plaintiff seeks leave to serve the 3rd defendant by way of substituted means through an advertisement in the Daily Nation Newspaper, the Standard Newspaper and the Business Daily Newspaper. The plaintiff also seeks injunctive orders against the defendants; The same are framed in a more or less similar manner to the orders sought in the earlier application dated 8.2.2022, save that the suit property is now identified as Nairobi /Block 23/107, previously known as L.R. No. 209/3154 (I.R NO.73509), Mwingi Road / Nyeri Road, Kileleshwa, Nairobi, a temporary injunction restraining the 3rd Defendant either by itself, its contractors, agents, employees or any other person claiming through it from continuing with any construction works on the suit property and in the alternative, there be an order of inhibition.
2. The application is based on grounds on its face and on the supporting affidavit of Peter K. Rotich, an Administrator and Trust Secretary of the plaintiff sworn on November 30, 2022. Again the averments set out therein echoes, the contents of the earlier affidavit sworn in support of the earlier application, adding that the suit property was 1st issued to the 1st defendant herein on May 2, 1997 and a transfer effected in favour of the 3rd defendant on January 6, 2015. He points out that the 1st defendant is a director and principal shareholder of the 3rd defendant thus the transfer was deliberately effected to conceal the fraudulent acquisition by the 1st defendant.



3. The deponent contends that the court has already issued an inhibition with respect to the suit property but the plaintiff's attempts to register it was rejected by the 2nd defendant on grounds that the registered owner to the suit property was different and due to the ongoing conversion process initiated by the Government of Kenya which has since seen the property acquire a new parcel number being Nairobi Block 23/107. He avers that the application meets the threshold in the case of *Giella v Cassman Brown*.
4. The application is opposed by the 1st respondent by way of her replying affidavit sworn on 6.2.2023. She deposes that the 3rd defendant is the registered proprietor of the suit property pursuant to a transfer dated January 6, 2015. She further deposes that prior to the transfer, she owned the property and has enjoyed quiet continuous uninterrupted possession since 1994.
5. She also deposes that she entered into a joint venture agreement with the current directors/ Shareholders of the 3rd defendant who wanted to construct a block of apartments thereon and the 3rd defendant was incorporated as a special vehicle for that purpose. The apartments have since been completed and are now awaiting sale to various purchasers thus the applicant has not established a prima facie case and since the value of the claimed suit property is ascertainable, the Plaintiff can be compensated by way of damages in the event it is successful.
6. The application is also opposed by the 3rd defendant by way of the replying affidavit sworn on February 16, 2023 by Abdullahi Sharif Abdihawab; one of its directors. He deposes that the 3rd defendant is a joint venture company incorporated on June 17, 2014 following a joint venture agreement dated March 19, 2014 with the 1st defendant in respect of the suit land for development of Vernonia apartments which is a 12 storey building.
7. He further deposes that prior to entering the joint venture agreement, the 3rd defendant conducted due diligence at Nairobi Land Registry, took possession, demolished the old structures and made an application for approval of building plans at the Nairobi City County. He avers that from the time the construction of the suit apartments commenced, there has not been any claim of any sort from the public until the institution of this suit.
8. The 2nd defendant did not enter appearance nor participate in the prosecution of the application. Despite this Court's directions of February 7, 2023 that parties file written submissions, none of them complied.
9. The plaintiff's prayer for leave to serve the 3rd defendant by way of substituted service is spent as the 3rd defendant has since entered appearance herein and has even filed a statement of defence.
10. On the prayer for injunction orders, this court pronounced itself on the said issue in its ruling dated May 26, 2022, particularly paragraph 10 and 11 thereof. Thus I will say no more on the said issue save that the injunctive orders are hereby declined.
11. On inhibition, again the court rendered itself on the matter in the aforementioned ruling. However, the plaintiff contends that they have encountered a problem in lodging the inhibition as the registration records have changed in terms of ownership and the subject parcel.
12. In the final analysis, the court allows prayer No 4 (c) Only in the application dated December 9, 2022. The costs thereof shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA



JUDGE

In the presence of:-

M/s Kehanyi holding brief for Mr. Alakonya for 1st Defendant

Nyaribo for Plaintiff

Byakukama for the 3rd Defendant/Respondent

Court assistant: Vanilla

