



Tinga Traders Limited & 2 others v Gichana & 4 others (Environment and Land Case Civil Suit E125 of 2023) [2023] KEELC 19155 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19155 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E125 OF 2023
LN MBUGUA, J
JULY 27, 2023**

BETWEEN

**TINGA TRADERS LIMITED 1ST PLAINTIFF
ARANGA BOGONKO 2ND PLAINTIFF
NELSON OGETO 3RD PLAINTIFF**

AND

**RICHARD OMWENGA GICHANA 1ST DEFENDANT
BENSON OMWENGA MOSOTI 2ND DEFENDANT
JOSHUA OINDI OGOSO 3RD DEFENDANT
TOM OGONYO MOSOTI 4TH DEFENDANT
THE CHIEF LAND REGISTRAR 5TH DEFENDANT**

RULING

1. Before me is the Plaintiffs' Notice of Motion application dated March 27, 2023 seeking injunctive orders against the Defendants, restraining them from interfering with the buildings erected on LR No 209/3271/67 and LR No 209/3271/70 pending the hearing and determination of this suit.
2. The application is based on grounds on its face and on the 2nd Plaintiff's supporting affidavit sworn on March 27, 2023. He avers that the 1st Plaintiff commenced operations in 1959 and was registered as a limited liability company in 1981. That the plaintiff had 10 founder shareholders who were closely related as they all hailed from the same village, but 8 are now deceased, only him and the 3rd Plaintiff are alive as surviving shareholders holding the assets and shares of the 1st Plaintiff on behalf of the estates of the other 8 shareholders.



3. The 2nd Plaintiff also avers that in the course of the operations of the 1st Plaintiff, several investments were made in 1960's and 1970's which include properties in Mombasa, Nyamira, Bomet and Nairobi counties, of which the suit properties one located in Pangani area.
4. He avers that between 2007 and 2011, the shareholders of the 1st Plaintiff nominated the 1st to 4th Defendants as managers and employees of the 1st Plaintiff by virtue of being sons of the founding shareholders. Further, the 5th Defendant was nominated by shareholders as the manager in charge of the 1st Plaintiff's dubois office. Therefore, the Defendants constituted the 1st Plaintiff's management committee.
5. He further avers that the 1st Plaintiff made a resolution to redevelop the developments on the suit properties into modern tenements in order to attract better returns. However the 1st - 4th Defendants started a series of actions which are detrimental to the 1st Plaintiff.
6. He points out that in the past 1 year, the Defendants have removed all doors, windows, internal fittings, wiring mains and ruffs of the buildings erected on the suit property. That on December 26, 2022, they hired labour and machinery to demolish developments erected on the suit property. The defendants have also refused to account for rent and mesne profits with regards to the suit properties.
7. The application is opposed by the Defendants by way of a Notice of preliminary objection dated May 2, 2023 stating that this court lacks jurisdiction to hear the matter as the dispute is a commercial one, fueled by internal wrangles in the management of the 1st Plaintiff.
8. The Defendants also filed a replying affidavit sworn on July 7, 2023 by the 1st Defendant. He avers that the parties herein are not in discord in so far as ownership and possession of the suit properties herein are concerned and that the properties are not in danger. He points out that the 2nd and 3rd Plaintiffs together with the 1st to 4th Defendants are all either directors or shareholders of the 1st Plaintiff.
9. He argues that the dispute herein is about the management of the 1st Plaintiff which is an issue to be handled by commercial courts and to that end, the 1st Plaintiff has filed Nairobi HCCOMM No E288 of 2023 - Tinga Traders Limited v Kenya Commercial Bank Limited, Nelson Ogeto Nyamwenia & Joseph Aranga Bogonko which is scheduled for further directions on July 31, 2023.
10. He avers that LR No 209/3271/70 was sold to one Abukar Adow Ibrahim and Alnoor Abdi Edin vide the agreement for sale dated July 29, 2021. He adds that LR NO 209/3271/67 is under a joint venture between the 1st Plaintiff and one Abdirahman Adan Mohamed vide an agreement dated October 27, 2022, and that the proceeds from the 2 transactions are sitting in the 1st Plaintiff's bank account at Kenya Commercial Bank (KCB), Salama Branch but it was frozen by the 1st and 2nd Plaintiffs and other individuals behind them in an endeavor to change signatories and control it.
11. He adds that that the 2nd and 3rd Plaintiffs forged documents, purportedly signed by all the Defendants and caused change of directors of the 1st Plaintiff at the Company registry and even as the registrar effected changes substituting the Defendants with the 2nd and 3rd Plaintiffs, the deponent wrote a letter dated May 29, 2023 highlighting the inconsistencies in the 1st Plaintiff's company file and gave a way forward for to the 1st Plaintiff to hold a general meeting in order to resolve issues on how to conduct its affairs. A meeting was then held on June 23, 2023 but the 1st Plaintiff failed to make any meaningful progress.
12. He further avers that the orders sought herein will not only



- adversely prejudice 3rd Parties, but the 1st Defendant will also be rendered in automatic breach of the 2 agreements.
13. On June 16, 2023, the 2nd and 3rd Plaintiffs swore a supplementary affidavit. They aver that the 1st Plaintiff has been invaded by persons who are neither directors and shareholders as evidenced by the 1st Plaintiff's CR12.
 14. The matter was canvassed by way of written submissions. The Plaintiffs filed written submissions dated June 19, 2022. They submit that this is not a dispute between directors/shareholders of the 1st Plaintiff, that it is the 1st Plaintiff and its surviving directors seeking to prevent its land parcel from intruders, thus the jurisdiction of this court is befitting under Article 162 (2) (b) of the Constitution, as read with Section 13 of the Environment and Land Court Act.
 15. The Defendants did not file any submissions.
 16. The issue that falls for determination herein is whether the Defendant's preliminary objection is merited, if not can the injunctive orders sought by the plaintiffs be granted?.
 17. I find that there is no ownership dispute between the parties in relation to the properties known as LR No 209/3271/67 and LR No 209/3271/70. The real question in the matter is; who between the 2nd - 3rd Plaintiffs on one hand and the Defendants on the other side should control the suit properties which are assets of the 1st Plaintiff. Thus the conflict in the rights and interests of the parties concern the management of the 1st Plaintiff.
 18. The defendants contend that the plaintiffs have already taken the dispute to the commercial court in the case Nairobi HCCOMM No E288 of 2023 - Tinga Traders Limited v Kenya Commercial Bank Limited, Nelson Ogeto Nyamwenia & Joseph Aranga Bogonko. The plaintiff was mute on this averment. It is clear that the parties already have a platform to ventilate their management issues, that is the commercial court.
 19. I find that instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues amounts to an abuse of the court process; See *Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR*. In the end, I find that the Preliminary Objection is merited. This suit is hereby struck out. Considering that the parties appear to be relatives, where some are rather old, I direct that each party bears their own costs of the suit.

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

LUCY N. MBUGUA

JUDGE

In the presence of:

Angwenyi for 1st Plaintiff and 1st – 4th Defendants

Mose Nyambega for all Plaintiffs

Court Assistant: Eddel

