



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO. E 341 OF 2019

VLAN CONSTRUCTION LIMITED.....PLAINTIFF

- VERSUS -

RAMA HOMES LIMITED..... DEFENDANT

RULING

1. I am hard pressed to refer to this as a Ruling. What is before me in the form of an application, Notice of Motion dated 21st February 2020, is nothing short of an abuse of the court process.

2. This court by a Ruling dated 14th November 2019 decline to grant prayers sought by Vlan Construction Ltd, the Plaintiff, in the Notice of Motion application dated 7th October 2019. The plaintiff sought various injunctive orders, by that application, seeking to restrain Rama Homes Limited (the defendant) from engaging another sub-contractor until joint inspection was conducted; to restrain the defendant from interfering or removing the plaintiff's machinery, equipment and construction material until joint inspection was conducted and; to restrain the defendant from hiring or engaging another sub-contractor until joint inspection was done.

3. It is not denied that the plaintiff and defendant entered into a contract for main structure works of a development called Jumeirah Heights. The plaintiff was the sub-contractor and the defendant was the employer. The defendant alleges the plaintiff breached the contract and failed to complete construction. When the defendant inquired of the delay, the defendant alleges the plaintiff voluntarily vacated the site.

4. After hearing the plaintiff's injunction application dated 7th October 2019 this court by its Ruling of 14th November 2019 dismissed that application.

5. The plaintiff filed yet another application subject of this Ruling dated 21st February 2020. The prayers in that application are convoluted and inept. There is no other way of describing them. They partly seek orders in relation to plaintiff's machinery which is allegedly held by the defendant which was decided by this court by its Ruling of 14th November 2019. It also seek orders in relation to a matter, **Misc. Appl. No. E 633 of 2019 VLAN CONSTRUCTION LTD V RAMA HOMES LTD**, which matter is under the conduct of **Justice W. A. Okwany**.

6. The application dated 21st February 2020, without further ado

will be dismissed because seeking to relitigate the issue of machinery is an abuse of court process and the issue is res judicata and seeking to litigate about consent entered in Misc Appl. No. E 633 of 2019, in this file is fatal. The application is frivolous.

CONCLUSION

7. The application dated 21st February 2020 is dismissed. The status quo order issued on 28th February 2020 is vacated. At the reading of this Ruling a date for Case Management Conference will be fixed before me.

DATED, SIGNED and DELIVERED at **NAIROBI** this 25TH day of **JUNE** 2020.

MARY KASANGO

JUDGE

Before Justice Mary Kasango

C/A Sophie

For the Plaintiff:

For the Defendant:

ORDER

This decision is hereby virtually delivered this 25TH day of **June, 2020**.

MARY KASANGO

JUDGE