



Mungai & another v Cheska Agencies Limited & another (Environment & Land Case 388 of 2017) [2023] KEELC 20437 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20437 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 388 OF 2017
LN MBUGUA, J
SEPTEMBER 28, 2023**

BETWEEN

MIGUI MACHARIA MUNGAI 1ST PLAINTIFF

FLAVIA SUSAN KALANDE 2ND PLAINTIFF

AND

CHESKA AGENCIES LIMITED 1ST DEFENDANT

ELDORADO GARDENS LIMITED 2ND DEFENDANT

RULING

1. The Plaintiffs' Notice of Motion application dated June 2, 2023 is for determination before this court. They seek orders that this court finds the 1st Defendant's directors namely; Munira Mwinyi alias Munira Mwinyi Baraka and Prof Dr Mwinyikione Mwinyiha in contempt of Court for disobedience of the injunctive orders issued by this court on June 15, 2017 and subsequently sentence them to a jail term of 6 months.
2. The application is based on grounds on its face and on the 1st Plaintiff's supporting affidavit sworn on June 2, 2023. He avers that by a sale agreement dated September 8, 2016, the 1st Defendant agreed to sell the property known as LR Number Nairobi /Block 129/289 to the Plaintiffs for a consideration of ksh 7.5 million. The Plaintiffs paid the 1st Defendant ksh 2.5 million being the agreed deposit for the property. It was a condition that the balance would be paid on or before the completion date which was 90 days from the date of execution.
3. They aver that the 1st Defendant failed to complete the sale thereby necessitating filing of the instant suit simultaneously with an application seeking injunctive orders, restraining the 1st Defendant from selling /dealing in any manner with the suit premises, of which the orders were issued on June 15, 2017.



4. That on June 3, 2021, it emerged that the 1st Defendant had allegedly discharged the charge that had secured the suit property, sold and transferred that property to a 3rd party on November 18, 2020 whilst this suit was pending. He argues that the discharge, sale and transfer of the suit property to the 2nd Defendant were in contravention of the existing injunctive orders thus the 1st Defendant is in contempt.
5. The application is opposed by the 1st Defendant vide a replying affidavit of Munyira Wairimu Mwinyi sworn on July 18, 2023. She avers that this Court's interim orders of June 15, 2017 were conditional; the Plaintiffs were required to deposit ksh 5 million in court within 3 days failure to which the interim orders would stand vacated and since the Plaintiffs did not pay within the timelines, the orders stood vacated on June 18, 2017.
6. She also avers that the Plaintiffs moved this court with unclean hands as they failed to pay the balance of the purchase price. She adds that the 1st Defendant is willing to refund deposit paid by the Plaintiffs with respect to the sale agreement herein.
7. The deponent also avers that by the time this suit was filed and the Court pronounced itself, the 1st Defendant had already entered into an agreement for sale which was crystalized and the suit property was transferred to the 2nd Defendant on or before December 1, 2020 such that by the time this court issued orders on June 3, 2021, the 2nd Defendant had taken possession of the suit property.
8. The 2nd Defendant did not file a response to the application. Parties were directed to file their written submissions by July 6, 2023, but this order was not complied with.
9. The question for determination is whether the 1st Defendant is in contempt of court orders of June 15, 2017. The said orders were interim pending hearing of the Plaintiff's Notice of Motion application dated June 10, 2017. The application was eventually allowed vide the court's ruling of February 23, 2018, hence the orders of June 15, 2017 were confirmed.
10. It is on the basis of the said letter that the Plaintiffs argue that there are no restraining orders herein since the deposit was paid outside 3 days as directed by the court vide its orders of June 10, 2017.
11. The record indicates that the interim orders of June 15, 2017 were extended on various dates by the court including June 16, 2017, June 29, 2017, July 11, 2017 and on November 6, 2017. The Plaintiffs deposited the ksh 5 million well within the timelines since the orders were extended and timelines for payments enlarged.
12. In the circumstances, there exists orders of this court restraining the 1st Defendant against disposing the suit property to a 3rd party. Further, despite being active in these proceedings, the 1st Defendant failed to disclose the transfer of the suit property to the court leading the court to issue further orders of June 3, 2021 directing that rental income collected from the suit property be deposited in a joint interest earning account.
13. It is after the said ruling was issued that it emerged that the 1st Defendant had transferred the suit property to the 2nd Defendant thus the plaint herein was amended to join the 2nd Defendant.
14. In the circumstances, I find that the 1st Defendant is in contempt of orders restraining it from disposing off the suit property. In *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] eKLR the Court of Appeal reiterated that court orders are to be obeyed.
15. In the end, the application dated June 2, 2023 is partially allowed such that the directors of the 1st defendant are hereby found to be in contempt of the injunctive orders issued by the court. A Notice to Show Cause is hereby issued to the said directors to appear before this court and give an explanation



as to why they should not be punished for contempt. The 1st defendant is condemned to pay costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Mungai for plaintiffs

Kori holding brief for Githui for 1st Defendant/Respondent

Gatungo for 2nd Defendant

Court Assistant: Eddel

