



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. E121 OF 2018

OKSANA INVESTMENT SUPPLIES LIMITED.....PLAINTIFF

VERSUS

ALICE WANJIRU WAMWEA.....DEFENDANT

RULING

1. **OKSANA INVESTMENT SUPPLIES LTD**, the Plaintiff purchase property **L.R. No 209/11395 (I.R. 53103)** situated at Nairobi County. It is not denied that the Plaintiff purchased that property at a public auction, on 28th March 2018, where the property was sold by Faulu Microfinance Bank Ltd in exercise of its Statutory Power of Sale.

2. This suit was instituted by the Plaintiff for the order that the Defendant, **ALICE WANJIRU WAMWEA**, do grant the Plaintiff vacant possession. The property is presently occupied by various tenants.

3. This Court by its Ruling of 5th March 2019 ordered that the Advocates representing the Plaintiff and the Defendant do open a joint interest bearing account wherein the tenants would deposit their rent.

4. The Plaintiff has filed a Notice of Motion dated 7th June 2019. The Plaintiff seeks for a joint audit of the rent from the property; and in the alternative that each party do appoint their own independent auditor to audit the rental income for the property. The application also seeks that the Defendant be restrained from collecting rent or interfering with the tenants in occupation; that the Advocates for the parties herein do employ or hire a property manager, of that property; and that the Advocates for the parties do procure and take fire policy for the property.

ANALYSIS

5. The Defendant, it is not denied, resides within the property. The Plaintiff, though one of its Directors, stated in the affidavit that it finds it difficult to ascertain which of the tenants pays rent on the property and that it cannot confirm how much the rent is. The Plaintiff's Director deposed that the Defendant has continued to frustrate compliance of this Court's order, for the deposit of rent into the joint bank account.

6. The Defendant's response to the Plaintiff's application was to question the right of the Plaintiff to seek such orders. The Defendant stated that the Plaintiff has no right to title of the property due to what the Defendant argued was the Plaintiff's connivance with Faulu Microfinance Bank attempt to acquire the property unlawfully. The Defendant further alluded to attempts made by the Plaintiff to obtain possession of the property.

7. I have considered the arguments before me and the affidavit evidence. I wish to begin by disagreeing with the Defendant's Learned Counsel's submissions that this Court had no power to order accounts to be made, as provided under Rule 20 of the Civil Procedure Rules (the Rules). That Rule 20 is entitled application for account. In my view the Plaintiff does not, by the present application, seek accounts. What the Plaintiff seeks is an audit of the rent paid so far. I agree with the submissions of the Defendant that such an audit can only commence from 5th March 2019, when the Court ordered for the opening of the joint account.

8. The Court by the Ruling of 5th March ordered that a joint bank account be opened, between the Advocates, where the rental income will be deposited. The application before me simply seeks for clarity, from the tenants, on the rent payable and paid since the order was made. The Plaintiff's application is not for an account.

9. The Plaintiff's prayer for audit is in my view merited and is in tandem with the Court's Ruling of 5th March 2019. The prayer for injunction against the Defendant to restrain the Defendant from collecting rent or interfering with the tenants is also merited. The Defendant did not deny, in her Replying Affidavit, that she does not collect rent from tenants which is contrary to the Ruling of this Court.

10. The prayers for fire insurance and for property Manager to be hired are all in the interest of the property and are therefore merited.

CONCLUSION

11. The Court having considered parties' submissions and evidence grants the following orders:

a. Parties shall intimate in writing to each other within 14 days their acceptance of carrying out a joint audit of the rent income over property L.R. 209/11395 (I.R. 53103). In default of such an agreement each party shall carry out its own audit.

b. The Defendant is hereby restrained by injunction from collecting rent either by herself her servants or agents over property L.R. No 209/11395 (I.R. 53103) until further orders of this Court.

c. An order is hereby made for the parties to jointly or individually hire a Property Manager and acquire/procure Fire Policy over property L.R. 209/11395 (I.R. 53103). Payments for such hiring and procurement shall be paid from the funds in the joint interest earning account.

d. The costs of the Notice of Motion dated 7th June 2019 shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 24TH day of JULY, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie.....**COURT ASSISTANT**

.....**FOR THE PLAINTIFF**

.....**FOR THE DEFENDANT**