



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 174 OF 2015

ANWAR SIDI & 34 OTHERS..... PLAINTIFFS

VERSUS

JEDIDA MDUMBU & 8 OTHERS.....DEFENDANTS

RULING

1. The subject matter of this ruling is the notice of motion dated 28th April 2015 taken out by the plaintiffs/Applicants in which they sought for the following orders interalia:
 1. *THAT pending the hearing and determination of this application inter-partes, this honourable court be pleased to make an order directing the 1st to the 8th defendants(all inclusive), to stop hiring the 9th defendant as the security firm for the residential estate known as Kenya Medical Association estate South "C" Nairobi situate on Muhoho Avenue and an order directing the 9th respondent to pull out its security guards from the gates and compound of the residential Estate known as Kenya Medical Association Estate South "C" Nairobi, immediately.*
 2. *THAT pending the hearing and determination of this application inter-partes, this honourable court be pleased to make an order directing the 1st to 8th defendants (all inclusive), together with all the applicants/plaintiffs to agree to a meeting date, venue adn time, which meeting shall include all the residents, a notice thereof to issue and by concurrence of all the residents and/or an order of the court, the residents of the estate known as Kenya Medical Association Estate South "C" Nairobi do appoint on a temporary basis the security firm known as Kamangu Security firm or any other reputable security firm to provide security to Kenya medical Association Estate South "C" Nairobi, until further orders of the court.*
 3. *THAT pending the hearing and determination of this application inter-partes, this honourable court be pleased to make an order directing the 1st to 8th defendants (all inclusive), together with all the applicants/plaintiffs to appoint an Estate Management Committee through an all inclusive meeting, which meeting's date, venue and time must be communicated to all the residents through a notice of a seven (7) working days, issued by concurrence of all the residents.*
 4. *THAT pending the hearing and determination of the main suit inter-partes, this honourable court be pleased to make an order restraining the 1st to the 8th defendants (all inclusive), from hiring the 9th defendant as the security firm for the residential estate know as Kenya Medical Association Estate South "C" Nairobi situate on Muhoho Avenue, Nairobi.*
 5. *THAT pending the hearing and determination of the main suit inter-partes, this honourable court be pleased to make an order directing the 1st to the 8th defendants (all inclusive), together with all the applicants/plaintiffs' (the residents of the estate known as Kenya Medical Association Estate South "C" Nairobi) to appoint on permanent basis (subject to change where*

necessary) a security firm known as Kamangu security firm or any other reputable security guards to provide security to Kenya Medical Association Estate South “C” Nairobi.

6. ***THAT pending the hearing and determination of the main suit inter-partes, this honourable court be please to make an order directing the 1st to the 8th defendants (all inclusive), together with all the applicant s/plaintiffs’ to appoint an estate management committee through an all inclusive meeting, which meeting’s date, venue and time must be communicated to all the residents through a notice of seven (7) working days, issued by concurrence of all the residents.***
2. When served with the motion the respondents filed the replying affidavit of Steve Kiura to oppose the same. When the motion came up for interpartes, learned counsels recorded a consent order to have the motion disposed of by written submissions. At the time of writing this ruling, the plaintiffs were the only parties who had filed their submissions.
3. Before considering the substance of the motion, let me set out in Brief, the facts of this dispute. The plaintiffs aver that they are residents of the estate South “C” Nairobi. They also aver that they were provided with security through the guards known as Kamangu security guards until the guards from the aforesaid firm were removed by the 1st to 8th defendants on 13th March 2015. It is said that during the tenure of Kamangu security guards, there were no security lapses hence there were minimal house breakings and robberies. The plaintiffs have averred that since the aforesaid security firm was removed, there have been a resurgence of robberies, house breaking and theft. The plaintiffs have accused the 1st to 8th defendants for effecting the changes without consulting the other residents. It is stated that the defendants are running an illegal committee and hiring worthless security firms without consulting other residents. It is averred that those security firms are secretly hired by the 1st and 8th defendants. The plaintiffs further argued that the said security firm has allowed serious security breaches to occur. The plaintiffs have also alleged that they attempted to seek audience with th3rd defendant, the chairman of the defendants to discuss the security lapses and threats in vain. The defendants are said to have hired security guards from a firm known as Kenwed Security who then refused to open the gate for all other residents in the evening. This, according to the plaintiffs has exposed the residents to possible attacks at the gate. The plaintiffs are now beseeching this court to inter alia issue an order directing the defendants together with the plaintiffs to appoint an estate management committee through an all inclusive meeting.
4. The defendants on the other hand refuted the plaintiffs’ claims by stating that the plaintiffs did not obtain consents from the majority of the plaintiffs to file a representative suit. The defendants also argue that the 1st plaintiff did not disclose to them the purpose of the consent procured from them. The defendants argued that during the tenure of Kamangu Security guards, the estate encountered alot of security threats and breaches leading to their removal. The defendants also averred that the management of the estate agreed in principle that Kenwed management ltd was the most appropriate to provide security. The defendants urged this court to dismiss the motion.
5. I have considered the rival submissions filed by both sides. The main orders sought by the plaintiffs are basically mandatory and prohibitive orders of injunction. The principles for granting such orders are well settled. First, an applicant must show that he/she has a prima facie case with a probability of success. Secondly, an applicant must show that unless the order is given he/she would suffer irreparable loss. Thirdly that if the court is in doubt the balance of convenience will be applied.
6. There is no doubt that the plaintiffs have established that they have a prima facie case with a probability of success. It is alleged that the residents of Kenya Medical Association Estate South “C” were not consulted by the defendants before changing the security firm which provided them with security services. As a result of the aforesaid changes there is increased security breaches in the aforesaid estate.
7. I have looked at the documents attached to the replying affidavit of Steve Kiura and it would

appear that there were consultation undertaken by the defendants with the residents of the estate. The correspondences show that meetings were held and matters security were discussed. In my humble view, the plaintiffs cannot be said in the circumstances to have shown that they have a prima facie case with a probability of success.

8. It has also been argued that unless the order for injunction is given the plaintiffs are likely to suffer irreparable harm. The plaintiffs have complained that due to the defendants decision, the residents of the aforesaid Estate have been exposed to serious security risks by being blocked a the estate gate leaving them at the mercy of car jackers and robbers. In my view, this appears to be an appealing argument which shows that the plaintiffs would suffer irreparable loss unless the order is given. However, it would appear that beneath this dispute, is a contest between some of the plaintiffs and the defendants, fighting over the leadership of the estate. I have not been shown any iota of evidence showing that the alleged security breach occurred. Should this court issue the order sought, it would in essence be rewriting the contractual arrangements between the management of Kenya Medical Association Estate South "C" Nairobi and the security firm. That is a role this court cannot play. In the end I find that the plaintiffs have failed to sow the irreparable loss they would suffer should they be denied the order sought.
9. The third principle to be considered is the balance of convenience. I have carefully considered the rival submissions and it is clear to me that if I issue the orders prayed by the plaintiffs it may lead to the rewriting or termination of the contract between the defendants and the firm providing security services. It will also mean that the court will have created a scenario where parties will be forced to enter into signing new contracts with new firms to provide security. In my view this will cause more confusion and inconvenience to the parties. A reasonable order to make in the circumstances is to decline the orders sought.
10. In the end and for the reasons advanced hereinabove, I find the Motion dated 28th April 2015 not properly founded. It is dismissed with costs to the plaintiffs

Dated, Signed and Delivered in open court this 11th day of March, 2016

J.K. SERGON

JUDGE

In the presence of:

Jaoko for the Plaintiff

N/A for the Defendant