

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 70 "B" OF 2021

LAWRENCE KARANI.....APPLICANT

VERSUS

SHUNEM ACADEMY LIMITED.....RESPONDENT

RULING ON DIRECTIONS

1. On 2nd February 2022 Mr. Gatonye advocate representing the plaintiff, and Mr.Kagucia advocate representing the defendant, appeared before me for mention of this matter for directions. The firm of Gatonye & Gatonye Advocates had taken the mention date and had served the firm of Kagucia & Company Advocates. The matter had been transferred from the lower court where it had hitherto been registered as Nakuru CMCC No. 41 of 2019. The firm of Kagucia & Co Advocates vide Nakuru ELC Misc Application No.18 of 2020 applied for the transfer of the lower court file to this court for hearing and determination. The file was by consent of the parties ordered on 9th November 2020 to be transferred to this court where upon transmission, it was renumbered as Nakuru ELC No.70 "B" of 2021.

2. The counsel could not agree on the directions to take during the mention; and as the matter was before the court for the first time, the court opted to defer directions until it had reviewed the record before the lower court. The court having reviewed the record, it is apparent pleadings in the matter are yet to be settled. The suit was commenced by way of a plaint dated 26th February 2019 filed on the same date simultaneously with an interlocutory application seeking injunctive orders. An exparte interim order of injunction was granted and interpartes hearing of the application set for 1st March 2019, when it was not heard but the interim order was extended. The defendant on 28th February 2019 filed a Notice of preliminary objection challenging the jurisdiction of the court and the validity of the lease agreement dated 30th December 2017 upon which the plaintiff's suit was founded. The plaintiff on 5th, March 2019 filed a Notice of Motion seeking orders that the directors of the defendant be held to be in contempt of court for breach of the court order issued on 26th February 2019. The court directed the preliminary objection to be canvassed by way of written submissions and in the meantime the interim orders were extended.

3. The court record is sketchy as relates to what transpired between 8th March 2019 and 21st June 2019 when the court fixed the ruling on the preliminary objection for 2nd August 2019. The court record does not show when infact the ruling on the preliminary objection was delivered but there is on record a typed ruling signed by two magistrate Hon Omido J M PM and Hon. Benjamin Limo SRM. The ruling indicates it was delivered, dated and signed in open court on 19th November 2019 in the absence of the parties. There is no indication that the parties had any notice of the ruling.

4. What comes out from the perusal of the record is that although the preliminary objection taken by the defendant was not sustained by the court, the other applications to wit:-

(i) Application for injunction;

(ii) Application for contempt; and

(iii) Application for leave to amend the plaint filed by the plaintiff on 13th April 2021; all remained undetermined and the progress of the suit was somewhat stunted.

5. The defendant has also not filed a defence to the claim. There is indication that there have been various developments which may have affected the substratum of the suit after the suit was filed and that the parties may need to review and/or consider their positions going forward. Given the situation and the circumstances I give directions as follows:-

1. That the court with a view of facilitating the timely and expeditious disposal of the suit, do hereby dispense with the hearing of the Notice of Motion dated 26th February 2019 and 5th March 2019 on the terms that the status quo obtaining as at the date of this ruling shall be maintained and observed until the suit is heard and determined.

2. That as it appears to the court that the matter is such as would be suitable for a mediated settlement and or other form of Alternative Dispute Resolution (ADR) I am inclined to urge the parties to explore such avenue and I accordingly invoke the provisions of Article 159 (2) (c) of the constitution and Section 20 (1) of the ELC Act and allow the parties a period of 90 days from the date hereof to attempt to have the dispute between them resolved through ADR.

3. Matter to be mentioned on 15th June 2022 to confirm whether the parties will have resolved the matter through application of ADR and/or for further directions.

Ruling dated signed and delivered virtually at Nakuru this 24th day of February 2022.

J M MUTUNGI

JUDGE