



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. CASE NO. 545 OF 2012

BELGO HOLDINGS LIMITED.....PLAINTIFF

VERSUS

KENYA URBAN ROADS AUTHORITY.....1STDEFENDANT

THE MINISTER OF ROADS.....2NDDEFENDANT

RULING

Coming up before me for determination is the Chamber Summons dated 2nd October 2013 in which the Applicants seek for leave to be enjoined into this suit as the 2nd and 3rd Plaintiffs or in the alternative for this court to enjoin them into this suit as the 1st and 2nd Interested Parties. They also seek for the Plaintiff to be ordered to pay the costs of this Application.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of the 1st Applicant, Robert Kotch Otachi, sworn on 2nd October 2013 in which he averred that there is in existence another suit being **HCCC No. 454 of 2004** in which the Plaintiff sued him and his co-Applicant seeking a permanent injunction and a declaration that both he and his co-Applicant are not directors of the Plaintiff. He referred to the ruling delivered by Lady Justice Okwengu in that suit in which she required the Plaintiff to render to the Applicants full and accurate financial statements of the company every 3 months. He further averred that the Plaintiff through its lawyer Mr. Esmail failed to inform them before filing this suit. He further averred that upon learning of the alleged encroachment of the two parcels of land owned by the Plaintiff, they instructed lawyers to file this Application seeking to be enjoined herein for the purpose of safeguarding their interests. He added that it was prejudicial to him and his co-Applicant to be excluded from these proceedings yet there is a dispute of directorship as aforesaid. He conceded that in **HCCC No. 454 of 2004**, the issue of directorship was left open until after full trial.

The Application is contested. The Plaintiff filed a Notice of Preliminary Objection dated 22nd October 2013 in which the following was stated:

1. That the Application is misconceived and an abuse of the process of the court as the cause of action is solely vested in the Plaintiff and not anyone else.

2. Parties can only be added in accordance with **Order 1 rule 10 of the Civil Procedure Rules, 2010.**
3. “Interested Parties” is not a concept known in in the **Civil Procedure Act or Civil Procedure Rules, 2010.**
4. The Affidavit in support of the Application does not comply with the provisions of **Order 19 rule 3 of the Civil Procedure Rules, 2010.**
5. The Applicants are ex facie in contempt of court and openly defying the injunction issued against them.

Both the Applicants and the Plaintiff filed their written submissions which have been read and taken into account in this ruling.

The issue arising in this Application for my determination is whether or not to enjoin the Applicants into this suit either as Plaintiffs or interested parties. The instructive provision of the law on this point is **Order 1 rule 10(2)** of the **Civil Procedure Rules, 2010** which provides as follows:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

Going by the provision of the law cited above, the key criteria the court uses in deciding whether to enjoin a person into a suit is whether their presence is necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the suit. In this particular suit, the question that the court must determine is, inter alia, whether the Plaintiff is the registered proprietor of the two land parcels identified as Land Reference No. 3859 and 3860 situated on Peponi Road, Westlands (hereinafter referred to as the “suit properties”) and whether or not the Defendants have acquired portions thereof without paying due compensation for the purpose of construction of a road. Are the Applicants necessary parties to this suit? The Applicants have by their own admission stated that they claim to be directors of the Plaintiff. They have disclosed that there is a pending case being **HCCC No. 454 of 2004** between the Plaintiff and themselves where the main issue for determination is whether they are directors of the Plaintiff. They have by their own admission disclosed to this court that that case is part heard and the Judges who have handled the suit have ruled that the issue of directorship shall await determination at the full trial. Hence, as at this point, the Applicants have not been declared to be directors of the Plaintiff. Even if they were directors of the Plaintiff, I agree with the submissions of the Plaintiff that directors of a company are separate and distinct in the eyes of the law. The suit properties are alleged to be owned by the Plaintiff, not the Applicants. The Plaintiff is a separate legal entity and is distinct from its directors. Accordingly, I find that the presence of the Applicants in this suit is not necessary **“to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit”**.

In the alternative, the Applicants wish to be enjoined in these proceedings as “interested parties”. The Supreme Court of Kenya decision in the case of **Trusted Society of Human Rights Alliance versus Mumo Matemo & 5 Others (2014) eKLR** defines an interested party as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings and champions his or her cause.”

As I have stated earlier, the Applicants have no stake in the suit properties which are the subject matter of this suit. Whether or not they are found to be bona fide directors of the Plaintiff, they have no demonstrable interest in the suit properties. The suit properties are claimed to belong to the Plaintiff which is separate and distinct from the Applicants. As far as I can see, the Applicants have no

demonstrable stake in these proceedings and I therefore decline to enjoin them as interested parties in this suit.

The upshot of the fore going findings is that I dismiss this Application. Costs shall be in the cause.

DELIVERED AND DATED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2015.

MARY M. GITUMBI

JUDGE