



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
ENVIRONMENT AND LAND CASE NO. 123 OF 2014

1. CATHERINE AYUMA MALIKAPETITIONER

2. HEZEKIAH FRANCIS MALIKA

VERSUS

BIDII INTERNATIONAL LIMITED.....RESPONDENT

RULING

[1] The applicant herein filed a Notice of Motion dated 8th of July 2014. The main prayer in the motion is that pending the hearing and determination of this application interpartes, the respondent be restrained from preventing the applicants from utilizing a portion of 2 acre part of Bungoma/Kiminini/1492 comprising of 10 acres.

[2] The application is opposed by the respondent who filed a replying affidavit through its director Kennedy M. Ambundo.

[3] The brief history of the dispute is that a group of Kenyans living in Colorando United States of America formed a limited liability company called Bidii International Limited in the year 2009 and the same was registered in the companies' registry at Nairobi. The objects of the company are well set out in its Memorandum of Association filed herein.

In the Memorandum and Articles of Association, Catherine Ayuma Malika and Hezekiah Francis Malika, the applicants herein are indicated as subscribers and have indeed signed as such subscribers of the respondent. Prior to the creation of the respondent the applicants and others agreed to contribute US dollars 2500 each and once the respondent was created, the applicants became share holders of the respondent.

[3] The sole purpose of incorporating the respondent was to create a company for investment and self development for the applicants and other shareholders in Colorando U.S.A.

In furtherance of that goal the respondent bought land parcel Bungoma/Kiminini/1924 comprising of 10 acres for Kshs.3.5 million and a title was issued to the respondent in August 2011.

[4] There was an unfortunate disagreement between the applicants and the other shareholders of the respondent in regard to the land already purchased by the respondent and some shareholders thought the land would be sub divided and that each shareholder would get ½ an acre of the same. In that regard the applicant who are man and wife thought they could buy two other ½ acres from other shareholders and add to their two ½ acres and consequently get 2 acres. Acting on that belief, they actually took two acres from land parcel Bungoma/Kiminini/1942 believing that the two acres were rightfully theirs. They have

annexed to this application the sale agreement for the two half acres from other shareholders.

[5] The other shareholders of the respondent opposed to the taking of two acres by the applicants have argued through a letter filed herein that the land was not for sale in ½ acres and that the same shall be sold as a whole unit when a decision is made by the company through shareholders to sell the said land.

[6] This being the background of this application a few issues arise herein:

(a) What is the relationship between the parties herein?

(b) Who owns Bungoma/Kiminini/1942?

(c) Can some of the shareholders sell land or part thereof registered in the name of the respondent, a limited liability company?

(d) Can the orders prayed for be granted?

(a) *What is the relationship between the parties herein?*

There is no doubt that the applicants were some of the subscribers of the respondent. They later on after the registration of the respondent became shareholders of the respondent.

b) *Who owns the suit land?*

The respondent is a Limited Liability Company under Cap 486 Laws of Kenya and is a legal person¹

It owns Bungoma/Kiminini/1942. It is registered as such since 2009²

Can the other shareholders sell the assets of respondent?

They cannot do so without a proper resolution of the shareholders. They can however sell their own shares to other members as per Memorandum and Articles of Association of the respondent³

c) *Can the orders prayed for be granted?*

Under the Company's Act aforesaid the respondent cannot be forced to sub divide its land or even sell it without a resolution of its shareholders who should be properly constituted under the Act when that resolution is made. The sharing of the assets of the respondents must be done by a resolution of its members who will decide where and when each shareholder would be allotted.

[7] The application filed herein therefore fails. It is dismissed with costs to the respondent.

DATED and DELIVERED at BUNGOMA this 27th day of May, 2015

S. MUKUNYA

JUDGE

1. Salomon Vs Solomon[1879] Ac 22
2. See title deed issued in August 2011
3. See section 142 Companies Act Cap 486 Laws of Kenya