REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NUMBER 29 OF 2013

GEORGE NDUATI MUNENE. ..... APPLICANT/PLAINTIFF

VERSUS

VILLA CARE MANAGEMENT LTD. ..... RESPONDENT/DEFENDANT

R U L I N G

The application before the court is the Notice of Motion filed by the Plaintiff and dated 8th February, 2012. It seeks injunctive orders restraining the Defendant and its servants or agents from managing, providing services to, and in any way interfering with the Plaintiff's six houses out of 27 houses on L.R. No. 4857/121, pending the hearing and final determination of the suit.

The facts, as they come out from deponements in this application, are that twenty-seven (27) houses were developed on L.R. No 4857/121 Nairobi by Easthaven Development Company Ltd. Six were sold to the Plaintiff George Nduati Munene; Six (6) to Mentor Group Ltd and Fifteen (15) to individuals. Brookyln Springs Management Ltd, owned by all the owners of the 27 houses, was authorized to manage the 27 houses aforesaid by providing water, electricity, cleanliness and other related services. Mentor Group Ltd, which owns six houses as aforestated, and apparently without the sought consent of Brookyln Springs Management Ltd, or apparently without the consent of the individual owners of the 27 houses, appears to have gone ahead and appointed Villa Care Management Ltd to manage the 27 houses.

Plaintiff's grievances are that the said Villa Care Management Ltd is charging exorbitant management and service fees, including charges for water, electricity, cleanliness etc. He argues that the appointment of Villa Care Management Ltd was without his consent and the consent of the majority of the house owners. That the continued provisions of the said services by it is unauthorized, especially in respect to him, hence the prayers to restrain the defendant from providing such services.

In reply, the Respondent avers that the Defendant is an expressly appointed agent of Mentor Group Ltd and therefore the Plaintiff who had such knowledge, should have sued Mentor Group Ltd a the principal and not the Defendant who is a known agent. The Respondent also deponed that the services it provides to the 27 houses are standard and not exorbitantly charged as claimed by the Plaintiff. That in any case the Plaintiff had earlier accepted the services before changing his mind without giving any sufficient or reasonable grounds.

The Respondent also deponed that the majority of the landlords or tenants in the 27 houses are satisfied with the services provided and are not willing to be joined into this litigation.

Finally, the Respondent invokes an arbitration clause found in an Agreement Between Parties – i.e. Mentor Group Ltd and the Plaintiff dated the 24th November, 2005 which states in general terms that any

dispute arising with regard to any matter, liabilities rights on ownership, in connection with the Development of the Land, shall be referred to an arbitrator to be appointed as provided in the clause. He accordingly, asserted that this dispute should have been referred to arbitration. That since it was not so referred, the suit shows no prima facie case. The Respondent as well asserted that the loss or damage, if any, arising if the injunction sought is not granted, can be compensated in costs.

I have carefully considered the application taking into account all the materials and facts before me. There is evidence, prima facie, that the Plaintiff owns six of the 27 houses, the subject of this suit. Mentor Group Limited also owns six houses. The rest 15 are owned by individuals who are not party to this suit. The record does not show nor does the Mentor Group Ltd explain how it acquired authority to appoint the Defendant to be the manager of all the 27 houses. The contract of management between Mentor Group Ltd and Villa care Management Ltd, does not appear to bind the Plaintiff and the 15 other individual owners of houses.

It therefore, seems clear to the court that the moment the Plaintiff rejected the services being provided by the Defendant, that would be the moment the hitherto provided services would come to an end.

In respect to the six houses owned by the Plaintiff, therefore, the Plaintiff appears to have a prima facie case to prevent the Defendant from providing the discussed services. That is to say, that the Plaintiff has presented sufficient material which makes this court conclude that there exists a right in his favour which may have so far been infringed by the Defendant to the Plaintiff's detriment.

It is the court's view as well that unless the injunction sought is granted, the Plaintiff is likely to suffer irreparable harm. In this case, the Plaintiff complained of exorbitant service charges for his six houses by a party who probably had no legal right to provide them.

Finally, the court had to consider where the balance of convenience lay. Was it on the side of allowing the Defendant to continue to provide unwanted services to plaintiff? The court thought otherwise.

I have finally considered the arbitration clause invoked by the Defendant. A careful reading shows that the clause related to the scheduled development or construction arrangements which had been agreed upon by the original owners of the land L.R. No. 4857/121 up to and including the period of the division and distribution of the eventually developed land. The clause does not appear to govern relationship after completion and distribution of the plots. The clause is, therefore, irrelevant.

The conclusion the court comes to therefore, is that the Plaintiff is entitled to an injunction as prayed in relation only to his six houses until the suit is heard and finally determined. Costs are to the Plaintiff. Orders accordingly.

Dated and delivered at Nairobi this 26th day of May, 2014

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D A ONYANCHA

JUDGE