



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION
ELC CIVIL NO. 1126 OF 2013

KENSALT LIMITED1ST PLAINTIFF
SUPPLIES AND SERVICES LTD 2ND PLAINTIFF
VERSUS
CITY COUNCIL NAIROBI.....1ST DEFENDANT
WILFRED MASINDE 2ND DEFENDANT

RULING

By a Notice of Motion dated 27th January 2014 expressed to be brought under Order 1 Rule 3, Order 3 Rule 5 of the Civil Procedure Rules and sections 1A, 1B, 3 and 3A of the Civil Procedure Act, the Applicant, **GORVAS HOLDING LIMITED** prays for an order that the court do grant leave for it to be enjoined as a Defendant in this suit or alternatively as an interested party. The Applicant premises its application on the ground that the building plans issued to the plaintiff by the 1st Defendant for the construction of a perimeter wall around the suit premises were irregularly and unprocedurally procured and were a forgery. That if the plaintiff constructs the wall and other buildings that will permanently alter the nature of the suit property currently under litigation in **ELC 493 of 2012** where the applicant is the plaintiff.

The Applicant through the affidavit sworn in support of the application by one **Ashok Labshankar Doshi** who is described as a director of **Gorvas Holdings Limited** the applicant herein has made extensive reference to **HC ELC NO. 493 of 2012** where the Applicant is the plaintiff and the plaintiffs herein are the 1st and 2nd Defendants. In the present suit the plaintiff inter alia seek an order of injunction to restrain the Defendants (**Nairobi City Council** and **Wilfred Masinde**) from demolishing or destroying or interfering with the construction or further reconstruction of the duly approved boundary wall on **L.R. NO. 209/11410, L.R. NO. 209/11624, L.R. NO. 209/11410, L.R.NO.209/11250, L.R. NO.209/11125 and L.R.NO.12110** and special and general damages.

In **HC ELC 493 of 2012** the Applicant herein as plaintiff therein seeks as against the 1st and 2nd Defendants a permanent injunction restraining them from interfering with the plaintiff's plot **L.R. NO. 209/11278** off Mombasa Road. The Applicants also seek a declaration that title in respect of L.R. NO. 209/11410 held by 1st Defendant is null and void. As is evident from the Applicant's supporting affidavit

the issue in contention appears to be buildings plans that have apparently been approved in favour of the plaintiffs by the 1st Defendant. The Applicant argues that by allowing the plaintiffs to develop the subject parcel of land it would be tantamount to acknowledging the plaintiffs are the owners of the suit property yet ownership is in issue in **HC ELC 493 of 2012**. The Applicant further avers that it is the validity of the titles issued to the various parties that is in issue in both this suit and the earlier suit **HC ELC 493 of 2012** and thus it is necessary for the Applicant to be enjoined as party in this present suit for it to protect its interest.

The plaintiff's oppose the Applicant's application for joinder and one **Rajendra G. Thanker**, the plaintiffs Logistics Manager has sworn a replying affidavit in opposition thereto.

The Plaintiffs aver that there is no basis for the Applicant to be enjoined to this suit as the applicant's claim relates to land parcel **L.R. NO. 209/11278** whilst the plaintiffs parcels of land are **L.R. NOS. 209/11410** and **L.R. NO.12110**. The plaintiffs further contend the deponent of the affidavit in support of the application one **Ashok Labshankar Doshi** is not a director of the Applicant and thus lacks the capacity to depone to the affidavit and cites a copy of CR12 of the Applicant Company attached and marked "**ALD2**" issued by the Registrar of Companies which shows **James Wainaina Nganga** and **Charles Munavo Galo** as the only directors and Shareholders of the company. When did the deponent become a director of the Applicant?.

The Plaintiffs further contend the present suit does not seek to determine ownership of the suit properties but rather is for compensation of the plaintiffs by the Defendant City Council of Nairobi for demolishing the plaintiff's perimeter wall. In **HC ELC NO. 493 of 2012 Hon. Lady Justice M.A. Ang'awa** on 13th August 2012 granted an interim order in the following terms:-

" That the status quo prevailing in the suit premises that is 1st and 2nd Defendants M/S Kensalt Limited and M/S supplies and Services Limited in the possession of the respective suit premises L.R 209/11410 for the 1st Defendant and L.R NO.209/12110 for the 2nd Defendant be maintained until the next hearing of the application dated 8th August 2012".

I do not know whether at the time the status quo order was granted the Defendants therein and now the plaintiffs herein had constructed the perimeter wall, if they had, the status quo would mean the same was to remain intact. If they had not and sought to construct and the plaintiff/Applicant objected, then that was a matter that ought to have been handled in that suit. On the other hand if the perimeter wall was standing and the City Council demolished the same, then a new and separate cause of action against the City Council arose and the plaintiffs were entitled to proceed separately against the city council of Nairobi. This is the instant suit.

I have considered the application and the affidavits together with the submissions filed on behalf of the parties. The pleadings in **ELC NO. 493 of 2012** are clearly distinct from the pleadings in the present suit. While in **ELC NO. 493 of 2012** the issue of ownership and validity of the titles issued to the various parties is in contention that is not the case in the present case. True, it may be possible that the suit property claimed by the plaintiff in **ELC NO. 493 of 2012** being L.R. NO. 209/11278 may on the ground be the same as **L.R. NO. 209/11410** and **L.R.NO.12110** in respect of which the status quo order was granted on 13th August 2012 but that can only be determined when **ELC NO. 493 of 2012** is heard and determined. The present suit will not determine ownership of any plots as there is no claim to determine ownership. The court is merely called upon to determine whether there was a wall constructed by the plaintiffs that was demolished by the City Council of Nairobi and whether the demolition was lawful. I have observed that if the Applicant was opposed to the plaintiffs doing the perimeter wall, it had every right to raise the issue in **ELC 493 of 2012** where the Applicant is the plaintiff.

On the basis of the material placed before the court I am not satisfied that the Applicant has demonstrated that it has any legal interest in the instant suit to entitle it to be joined in the suit as a party. The interest that the Applicant has in my view can fully be ventilated through **HC ELC NO. 493 of 2012** where the Applicant is a party. There could be a case for consolidation of the two suits to be heard together but that

is for the parties to decide. The determination of **HC ELC NO. 493 of 2012** in so far as it will determine the ownership rights of the parties of the suit properties may have a bearing on the present suit where the plaintiff claims damages for demolished wall but from parties who are not parties in **HC ELC 493 of 2012**. My view is that the fact the plaintiffs may have the perimeter wall on the property they claim ownership of does not necessarily confer ownership to them. The court could at the end of taking evidence and hearing the parties in **HC ELC 493 of 2012** come to the determination that the plaintiffs are not the owners of the properties they claim ownership of. That suit will determine the issue of ownership of the disputed plots and not the present suit.

The upshot is that I decline to grant the application by the Applicant dated 27th January 2014 for joinder. The same is dismissed with costs to the plaintiff.

Ruling dated, signed and delivered this.....**30th**.....day of...**September**.....2014.

J. M. MUTUNGI

JUDGE

In the presence of:

MS Othieno for Application Interested party..... For the Plaintiffs

Mr. Kinyanjui Nyang'au For the Respondent