



**REPUBLIC OF KENYA**

**High Court at Nairobi (Milimani Commercial Courts Commercial and Tax Division)**

**Civil Case 577 of 2011**

**SHOWCASE PROPERTIES LIMITED ..... PLAINTIFF**

**V**

**BAMBURI SPEICLA PRODUCTS LIMITED..... DEFENDANT**

**R U L I N G**

**1.** The Notice of Motion application before court is dated **22<sup>nd</sup> April 2012**. The application seek primary orders for a site visit and inspection of the suit premises by this court, and that upon the same happening, the notes and observation made thereon do form part of the court's proceedings.

**2.** The application is supported by affidavit of **FRANCIS M. GACHANJA** dated **22<sup>nd</sup> February 2013**, and a further affidavit dated **8<sup>th</sup> March 2013** and is premised upon the grounds set out therein, among them that under Order 40 Rule 10 this court is empowered to inspect any (suit) property so as to determine the real controversy.

**3.** The application is opposed by a Replying Affidavit sworn by **BETTY KANYAGIA** dated **8<sup>th</sup> March 2013**.

**4.** The brief history of the application is that the Plaintiff claims that the Defendant supplied defective concrete material to the Plaintiff which caused cracks in the Plaintiff's building referred to in the Plaintiff. This is however denied by the Defendant. After the close of pleadings, the Plaintiffs made an application

for experts to visit and inspect the building in order to confirm whether the cracks were caused by the Defendant as alleged by the Plaintiff. The application was allowed, and both parties engaged experts who visited and inspected the Plaintiff's property. The experts also took samples and used the same to prepare expert reports which have been filed in this case. In addition the Plaintiff made a further application seeking that the Ministry of Roads Department of Material Testing be allowed to visit the premises, inspect the property and prepare a report on the said claims. The court granted that application and a representative from the said Ministry visited the premises, carried out inspection as ordered by the court, took samples and prepared a report which has been filed in court. In other words there are now three expert evidence on record:-

*a. A technical report prepared by the Plaintiff's experts.*

*b. A technical report by the Defendant's expert.*

*c. A technical report by the Ministry of Roads.*

5. It is now contended by the Respondents that the current application to visit the site is not a good use of judicial time, and that since the Applicant has chosen to go by expert evidence, there is no need for the court to visit the site as this would amount to duplication of effort.

6. Supplying a number of authorities where the court visited the site under similar circumstances the Applicant submitted that the court would appreciate the matters at hand best if it visited the site.

7. I have carefully considered the application and submissions. While I agree that there is adequate expert evidence now on record, I still believe that since a court is not an expert in the matter, the courts lay observation of the site would help the court to better understand the expert evidence. It would amount, so to speak, "*to looking at the demeanor of the witness in court.*"

8. Secondly, the Applicant is the owner of the case at hand, and to the extent judicially possible, the court would grant its wish for the court to visit the site. I do not think that the site visit is a waste, or imprudent use, of the judicial time. To grant this application would to the contrary allow the parties to move faster in the suit.

9. I allow the application with costs in the cause.

**10.** I direct that said site visit be arranged by the parties, and should be effected within the next 30 days, as time is of the essence.

**11.** The site visit can be carried out by any Judge in this division as this is a fresh matter which has not been heard by any Judge.

It is so ordered.

**DATED, READ AND DELIVERED AT NAIROBI**

**THIS 30<sup>TH</sup> DAY OF MAY 2013**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

**Kamama holding brief for Mugambi for the Plaintiff**

**Ohenga for the Defendant**

**Teresia – Court Clerk**