



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC NO. 733 OF 2012

**LEEBAN ESTATE WELFARE
GROUP.....PLAINTIFF/APPLICANT**

VERSUS

**BOARD OF TRUSTEES OF INSURANCE
& TRAINING EDUCATION TRUST T/A**

**COLLEGE OF INSURANCE.....1ST
DEFENDANT/RESPONDENT**

CHIEF EXECUTIVE OFFICER OF

**COLLEGE OF INSURANCE.....
2NDDEFENDANT/RESPONDENT**

RULING

Coming before me for determination is the Plaintiff's Notice of Motion dated 18th October 2012 in which the Plaintiff is seeking for the following orders:

1. That the court do grant entry orders to the Plaintiff into the Defendant's parcel of land L.R. No. 209/10210 (hereinafter referred to as the "Suit Premises") for the purpose of connecting its sewer system to the Defendant's manhole connecting to the main sewer which is adjacent to the Plaintiff's parcel of land L.R. 209/13329 (hereinafter referred to as the "Adjacent Plot").
2. That a mandatory injunction do issue compelling the Defendants to allow the Plaintiff to connect its sewer system to the Defendants manhole connecting to the main sewer line pending the hearing and determination of this application and the main suit.
3. That costs of the application be provided for.

The Application is supported by the grounds appearing on the face of it together with the Supporting Affidavit of Bashir Haji sworn on 18th October 2012 in which he stated that he is the Chairman of the Plaintiff, a welfare group comprising of residents of Nairobi South C occupying the Adjacent Plot. He asserted that the estate was developed by a company known as Leebarn Builders Limited (hereinafter referred to as the "Developers"). He stated that the Plaintiff's estate has a sewer problem since its

construction and that when he together with other residents of the estate contacted the Developers about this problem, they were informed that the sewer connection was frustrated by the Defendants who denied them access to connect the sewer line from the Adjacent Plot to the manhole situated on the Suit Premises. He further asserted that the Developers had acquired the requisite consent from the Nairobi Water & Sewerage Company Ltd to proceed with the connection of their sewer through the manhole situate on the Suit Premises. He further averred that the Defendant's engineer M/s Otieno Odongo & Partners had also confirmed that manhole on the Suit Premises could sustain the sewer load from the Plaintiff's estate. He further disclosed that despite all this, the Defendants declined to allow the Plaintiff the said connection. He further stated that the Defendants actions continue to cause the Plaintiff's estate to flood with sewer causing the residents of the estate to suffer immensely as the same is not only causing damage to the property but is also causing health problems, environmental hazards and foul smell.

The Application is opposed. The 1st Defendant filed the Replying Affidavit of Lydia Nganga, sworn on 5th December 2012, in which she stated that she is the Trust Secretary of the 1st Defendant. She stated that this suit is bad in law as the plaintiff has no *locus standi* as they are not a legal entity capable to suing in their name. She also stated that the orders of entry and mandatory injunction sought are indeed final orders being sought at an interlocutory stage. She further averred that the orders sought would interfere with existing court orders for maintenance of status quo obtain in **ELC No. 47 of 2010 Thumbi Kariuki & 2 Others vs the Registered Trustees, Insurance Training & Education Trust** which touches on the Suit Premises which is the part of land in which access and connection is sought. She further averred that the orders sought do not reckon the cost of further construction and maintenance of the expanded sewerage infrastructure and as such the Plaintiff would negatively impact on the Defendant's sewerage capacity. She also stated that the Plaintiff was misleading the court to believe that the manhole in the Suit Premises belongs to the Nairobi City Water & Sewerage Company Limited which was not the case. She further disclosed that the manhole and sewerage system on the Suit Premises was the private property of the Defendants and has never been adopted by the local authorities. She also asserted that the Plaintiffs took over and purchased residential units from the Developer without demanding a well-constructed sewer system, leading to the current sewer effluent problem. She also disclosed that the problem of sewer effluent was seeping through the walls of their perimeter wall and flowing into the Suit Premises to the great annoyance, nuisance and exposure to risk of the Defendants employees and student population. She also disclosed that the Defendant had over the years made complaints to the Plaintiff, Public Health, **NEMA** but the problem persists. She also disclosed that the parties entered into negotiations for the provision of an easement but the same could not be concluded because the Plaintiffs had problems financing the venture as they were relying on the Developer and further that granting the said easement would force them to violate a court order as indicated earlier. She also stated that the Plaintiff's conduct was not deserving of the orders as they had previously taken the law in their hands in trespassing and breaking the Defendant's wall in an attempt to forcefully connect. She further stated that the Defendant was not willing to take over responsibility for the waste disposal of the Plaintiff. She further indicated that the Defendant is a private trust funded by the insurance industry stakeholders and is not a government or public body.

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

None of the parties herein have produced ownership documents in respect of the Suit Premises or the Adjacent Plot. However, the issue of ownership of the two parcels of land is not what is in dispute in this case. The dispute has to do with the right to connect to a manhole located on the Suit Premises, which is connected to the main sewer line. The Defendant has maintained that it is not a government or public body but a private institution which is entitled to exercise full ownership rights over the manhole located on the Suit Premises which is its private property. The Plaintiff on its part has not disputed this issue but has sought a court order to enter and connect its sewer line to the manhole located on the Suit Premises. Upon what basis does the Plaintiff seek such orders? It would appear that the parties were at some point engaged in negotiations for the grant by the Defendant of an easement to the Plaintiff to enable them to connect to their manhole. However, the Defendant disclosed that this process was scuttled by financial constraints facing the Plaintiffs together with the existence of a court order in **ELC No. 47 of 2010** requiring the status quo to be maintained in respect to the Suit Premises.

In light of the foregoing, I decline to allow the application for the following reasons:

1. The Plaintiff has not disclosed any legal right or basis upon which they are entitled to connect their sewer line to the Suit Premises, the property of a private entity;
2. The orders sought by the Plaintiff are final orders which cannot be granted at this interlocutory stage of these proceedings.
3. The orders sought by the Plaintiff would interfere with existing court orders for maintenance of status quo obtaining in *ELC No. 47 of 2010 Thumbi Kariuki & 2 Others vs the Registered Trustees, Insurance Training & Education Trust* which touches on the Suit Premises.

Arising from the foregoing, I hereby dismiss this application. Costs shall be in the cause.

SIGNED AND DELIVERED AT NAIROBI THIS 15th Day of November 2013

MARY M. GITUMBI

JUDGE