



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

CIVIL SUIT 394 OF 2011

FRANCIS CHEGE MAINA & 4 OTHERS.....PLAINTIFFS

VS

JOHN KAGUMA MAINA & 2 OTHERS.....DEFENDANTS

CONSOLIDATED WITH

-
CIVIL SUIT NO. 539 OF 2011
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KENWIDE INVESTMENTS LIMITED.....PLAINTIFF

VS.

FRANCIS CHEGE MAINA & 4 OTHERSDEFENDANTS

DIRECTIONS

1. Sections 1A, 1B and 3A of the Civil Procedure Act give this court the power and jurisdiction to make these directions for the just determination of proceedings, efficient disposal of the business of the court and for efficient use of available judicial and administrative resources.
2. These directions have been necessitated by the filing of a multiplicity of applications in both of the above suits by parties on either side. The directions are geared at formulating an efficient structure for the disposal of the applications and the dispute as whole.
3. In HCCC 394 of 2011, the applications filed and orders sought are as follows:

Date of Application	Orders sought	Present status
15 th September	The 1 st , 2 nd and 3 rd defendants to render accounts to the	No orders issued

2011	applicants	
29 th November 2011	Injunction to restrain 1 st , 2 nd and 3 rd defendants from interfering with management of Ambassadeur Hotel and Capital Holdings.	Status quo maintained pending inter partes hearing on 2 nd December 2011.
30 th January 2012	Injunction to restrain defendants and their agents Paragon Property Consultants from collecting rent or levying distress to the tenants of Ambassadeur Investments (K) Limited	Application certified urgent; to be heard together with previous applications.
28 th February 2012	That parties do file submissions on the application of 30 th January 2012 by 15 th March 2012	Variation of earlier directions declined
8 th March 2012	An injunction to restrain the defendants and Paragon Consultants from collecting rent and managing the 5 th Plaintiff Ambassadeur Investments Limited; an order compelling the defendants and Paragon Consultants to deposit all rent collected in a joint account of the parties and the court to supervise any outgoings	Parties to deposit all monies, rent and income in a joint account in the names of the advocates for the parties. This was not complied.
26 th March 2012	Application by interested party that orders of 8 th March 2012 be varied so that rent can be paid to the agent Paragon Property Consultants.	Orders of court issued on 8 th March 2012 are varied to provide that rent for the month of April 2012 be collected by Paragon Consultants Limited
18 th April 2012	Parties to agree on an estate agent to collect rent within 7 days failing which the court to appoint such an agent.	Application should be heard in priority to all other applications.

4. In HCCC No. 539 of 2011, the following applications have been filed:

29 th November 2011	Injunction to restrain the defendants from interfering with the management of Ambassadeur Hotel.	Status quo to be maintained; interested party to manage the hotel; defendants to manage Batis Restaurant
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5. From the above, it is clearly discernible that all applications revolve around a dispute between the parties with regard to the management of properties owned under the umbrella of Ambassadeur Investments (K) Limited, a company in which both the plaintiffs and the defendants in HCCC No. 394 of 2011 claim to be shareholders and directors. Both the plaintiffs and the defendants are brothers and this has made the resolution of the dispute sensitive, delicate and urgent.

6. The plaintiffs are aggrieved that collection of rent and other income of the properties is currently within the control of the defendants as the same is collected by an agent appointed exclusively by the defendants. They also seek orders that the defendants should give an account of all such income. On the other hand, the defendants claim that the plaintiffs are non-director shareholders and should not therefore be allowed to meddle with the management of the properties and income of the company.

7. This court notes that in all the above applications, no substantive orders have been issued. The interim orders that this court has variously issued have not been effective in creating order and harmony in the management of the properties and in calming the dispute pending the hearing of the suit. From the

velocity of applications still streaking in court week in week out, it is unlikely that the court can find a lasting resolution of this matter with any sense of permanence. Consequently, the court takes the view that only a full hearing can unravel the dispute and result in a full determination of the substantive rights of the parties. However, pending such hearing, the court is under a responsibility to both parties to put into place measures that will serve the interests of both sides of the dispute by preserving the assets and income of the company until the suit is fully determined.

8. I am therefore inclined to make the following directions in the matter:

- 1) Hearing and determination of all pending applications is hereby stayed to allow parties to prepare the suit in the consolidated matter for hearing and the applications declared as spent.
- 2) No further applications shall henceforth be filed in this suit, save that a party may apply on a matter bearing directly on the implementation of these directions.
- 3) Pending the hearing and determination of this suit, parties are directed to identify and appoint a mutually agreeable reputable property management company to oversee management of the properties and income of Ambassadeur Investments (K) Limited. Such appointment to be made within 7 days from today. In the event of parties failing to agree on the property manager, the court shall make the appointment pursuant to Order 41 of the Civil Procedure Rules, 2010.
- 4) The property management company presently collecting rent to collect rent for the month of May 2012 and to hand over to the newly appointed company by or before 15th May 2012.
- 5) All income collected by the new management company to be held in an account opened in the name of Ambassadeur Investments (K) Limited operated jointly by the management company, a representative of the plaintiffs and a representative of the defendants or their advocates. All outgoings from the account to be agreed upon by the said representatives.
- 6) Status quo and all interim orders in place to subsist until 15th May 2012 when further directions of the court shall be given.
- 7) Matter is fixed for mention on 15th May 2012 to review compliance status with directions (3) and (4) above.
- 8) To expedite the conclusion of this matter, parties are directed to comply with the provision of Order 11 of the Civil Procedure Rules as follows:
 - a) The plaintiffs shall file and serve their bundle of documents within 14 days from today.
 - b) The defendants shall file and serve their bundle of documents within 14 days from the date of service of the plaintiffs' bundle.
 - c) The plaintiffs shall file and serve their list and witness statements within 14 days of service of the defendants' bundle of documents.
 - d) The defendants shall file and serve their list and witness statements within 14 days of service of the plaintiffs' list and statements.
 - e) The parties shall file a statement of agreed issues within 45 days from today failing which each party shall file its own version within 7 days from the date of disagreement and in event before the hearing date.
 - f) Matter will be mentioned on 25th June 2012 to confirm compliance and for taking of a hearing date.

IT IS SO ORDERED

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL 2012.

J. M. MUTAVA

JUDGE