



Aesthetics Limited v Bitu & 2 others; Nairobi City County (Interested Party) (Environment & Land Case E119 of 2023) [2022] KEELC 15713 (KLR) (29 June 2022) (Ruling)

Neutral citation: [2022] KEELC 15713 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E119 OF 2023**

**LN MBUGUA, J
JUNE 29, 2022**

BETWEEN

AESTHETICS LIMITED PLAINTIFF

AND

RUTH MORAA BITA 1ST DEFENDANT

NAOMI MOGITI KEAGO SIAGI 2ND DEFENDANT

PAUL NYAKWANYA KEAGO 3RD DEFENDANT

AND

NAIROBI CITY COUNTY INTERESTED PARTY

RULING

1. The plaintiff's notice of motion application dated March 23, 2023 is for determination. The plaintiff seeks orders that the defendants be restrained by themselves, servants and/or agents from interfering in any manner whatsoever with the plaintiff's quiet enjoyment of that property known as LR 209/13071/IR No 81030/1 and specifically from engaging in any act aimed at evicting the plaintiff from the said premises. It also seeks costs of the application.
2. The application is premised on grounds on its face and on the annexed affidavit of the plaintiff's director one Salim Lamuwalla sworn on March 23, 2023. The case of the plaintiff is that they own parcel LR 209/5017/1 IR No 27879 and in its frontage is plot No 51 Pembe Street, Industrial area which belongs to the interested party. They aver that the said property was previously occupied by kiosk owners who are trespassers and whose business grossly interfered with the business of the owners of adjoining properties, but the kiosks were demolished in year 2010 by the predecessor of the interested party.



3. He avers that in the year 2011, the plaintiff sought authority of the interested party's predecessor to beautify the said frontage through a letter dated April 8, 2011 which authority was granted vide a letter dated March 14, 2011! Subsequently, in 2016, the plaintiff applied to the interested party for a temporary occupational Licence and the same was granted through a letter dated February 24, 2016. The plaintiff strictly complied with the terms of the said licence including paying the requisite fees.
4. However, in the year 2022, the defendants /their agents in the company of scores of police officers invaded the suit property claiming to be registered owners and intimidated and threatened the directors of the plaintiff with arrest and confinement. Eventually the plaintiff accepted the defendant's offer to sell to them the suit property but the interested party insists that the suit property has not been alienated to anyone yet the defendants have through their advocates communicated intent to evict the plaintiff.
5. The application is opposed by the defendants *vide* their replying affidavit sworn on May 19, 2023 by the 1st defendant. They aver that they own LR No 209/13071 and as such, the temporary occupation licence exhibited by the plaintiff does not confer title over their land. That the plaintiff on its own free will offered to purchase the suit property, of which, they considered the request and consented to it, but the parties never came to a conclusive agreement.
6. The defendants further contend that they have sued the plaintiff in ELC No E163 of 2023 but the plaintiff failed to disclose this fact to the court.
7. The interested party only filed a notice of appointment of advocates on May 23, 2023 but failed to put in a response to the application.
8. On May 22, 2023, parties were given timelines to file further pleadings and responses. The plaintiff was directed to file submissions by June 6, 2023, but there was no compliance with the said order. Equally, the interested party did not file any submissions. The defendants filed written submissions dated June 6, 2023 which have been duly considered by this court.
9. I have considered all the issues raised herein. The plaintiff's claim is based on its allocation of a temporary occupational licence of the property known as plot No 51 Pembe Street, Lusaka Road, Industrial area by the interested party. The plaintiff claims that the interested party owns the said plot which is adjacent to the plaintiff's property known as LR 209/5017/1 IR No 27879. The said alleged owner, interested party did not show any interest in this matter despite being served. Further, the plaintiff did not establish nexus between plot No 51 Pembe Street and LR 209/13071/IR No 81030/1.
10. In contrast, the defendants have established that they purchased the suit property which was duly transferred to them and a certificate of title issued. Without delving into the merits of the case, it is clear that a temporary occupational licence does not confer any proprietary rights over a property. Further, the temporary occupation licence dated February 24, 2016 is inconsistent with annexure SL4 which are bills issued by the interested party to allegedly licence the plaintiff to occupy plot 51 in 2016 yet they are generated in 2021.
11. Further correspondences between the defendants and the plaintiff also points to the direction that the plaintiff is not under threat from anyone, after all they have been in commercial negotiations with the defendants over sale of the suit property. The plaintiff has not demonstrated that he stands to suffer any loss if the orders are not granted and the balance of convenience falls on not allowing the application.
12. Further, an injunction is an equitable remedy, thus a party seeking such an order must disclose all facts. The court notes that the plaintiff had initially concealed the existence of the suit ELC Case No E163



of 2023, Ruth Moraa Bitu and Naomi Mogiti Keago Siagi v Aesthetics Limited which concerns the suit property.

13. I find that the application dated March 23, 2023 has not met the criteria set out in the case of *Giella v Cassman Brown* [1973] EA 358. In the circumstances, the said application is dismissed with costs to the defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JUNE 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Nyakundi for plaintiff

Siagi for 1st – 3rd Respondents

Kagecha for Interested Parties

Court assistant: June

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