



REPUBLIC OF KENYA



**Pramukh Developers Limited & another v Swami Investment Limited & another;
Chief Government Valuer & another (Interested Parties) (Environment &
Land Case E400 of 2021) [2022] KEELC 160 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 160 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E400 OF 2021
LC KOMINGOI, J
JUNE 16, 2022**

BETWEEN

PRAMUKH DEVELOPERS LIMITED 1ST PLAINTIFF

VIOLET MARANGA 2ND PLAINTIFF

AND

SWAMI INVESTMENT LIMITED 1ST DEFENDANT

KAUSAK RAMJI GUDKA 2ND DEFENDANT

AND

CHIEF GOVERNMENT VALUER INTERESTED PARTY

VIDYA TOWERS PLC INTERESTED PARTY

RULING

1. The 1st Defendant filed the amended originating summons dated January 4, 2022.
2. It is brought under Sections 5 of the [Stamp Duty Act](#) Chapter 480 Laws of Kenya, Section 46 [Land Registration Act](#), No. 3 of 2012, Order 37 Rule 8 of the Civil [Procedure Rules](#) and any other enabling provisions of the law.
3. The Plaintiffs seek determination of the following questions:-
 - a. Whether the 1st Defendant is exempt from paying stamp duty as provided for in the [Stamp Duty Act](#) and whether the payment of the same is illegal.
 - b. Whether the 1st Defendant is a joint owner of property known as LR No 209/21943 situate in 1st Parklands Avenue.



- c. Whether the fights by the Defendants and their counsel are crippling the transfer of reversionary interest from the lessor to the manager.
 - d. Who has the capacity to effect registration of the 14 unregistered leases?
 - e. Whether the Plaintiffs are entitled to the cost of this suit.
4. The originating summons were supported by the 1st Defendant's affidavit sworn on November 22, 2021 by Sameet Satishchandra Patel, a director of the 1st Plaintiff. He deponed that the 1st Plaintiff purchased the property known as LR No 209/21943 (Original Number 209/1222/7) from the 1st Defendant and that it subsequently entered into an investment agreement/sale agreement dated February 21, 2013. He added that it was an agreed term of the agreement that the Plaintiff will purchase the property together with the buildings and improvements thereon at a consideration of Kshs 70 million payable by way of allocation of 10 or more apartment units in favour of the 1st Defendant. He added that the 1st Defendant was allocated 15 apartments and that the 1st Plaintiff further paid a sum of Kshs 50 million being a further monetary consideration to the 2nd Defendant for the purchase of the suit property.
 5. He further deponed that the 1st Plaintiff initiated a change of use for the property from single to multi-dwelling which subsequently led to issuance of a new title number namely LR No 209/21943 and the property was then registered in the 1st Plaintiff's favour. The 1st Plaintiff then commenced construction of 58 residential apartments known as the "aura" which was completed in 2017.
 6. Mr. Patel also deponed that the 1st Plaintiff retained the firm of Ramesh Sharma Advocates in its capacity as the lessor & sole proprietor of the suit property to prepare the agreements of sale, leases and undertake registration of the said leases to the respective lessees. He added that Ramesh Sharma was a sole proprietor of the firm and upon his demise, his practice was wound up thus the 1st Plaintiff nominated the 2nd Plaintiff to undertake registration of the pending leases, retain the original title of the property known as LR No 209/21943 currently registered in the 1st Plaintiff's favour and thereafter initiate a transfer of reversionary interest from themselves to the management company.
 7. The summons were also supported by the 2nd Plaintiff's supporting affidavit sworn on November 22, 2021. She deponed that she took over conduct of registration of leases in respect of the apartments constructed on the suit land from Ramesh Sharma, Advocate, now deceased. She further deponed that the deceased Advocate's firm prepared leases for 15 apartments allocated to the 1st Defendant and on 15th February 2019, he wrote to the directors of the 1st Defendant through the 2nd Defendant requesting them to execute their leases but they failed to do so and they remained unexecuted until she took over the matter. She added that when she took over, she notified the 2nd Defendant that she would be presenting the leases for valuation for purposes of assessment of stamp duty and thereafter registration and they did not raise any objection to have their apartments valued for purposes of stamp duty.
 8. She stated that she notified them of the outcome of the valuation but they, through the firm of HMS Advocates LLP and through the letter dated February 25, 2021, rejected the outcome of the valuation and demanded that she initiates cancellation of the same and hand over unregistered leases to them for their further action. She deponed that they also stated that the outcome of the valuation does not reflect the true market worth of the property as it is exaggerated.
 9. She deponed that they have so far registered 42 leases with an exception of 16 out of which 14 belong to the 1st Defendant and the remaining 2 have since been lodged. She added that unless this court compels the 1st Defendant to pay stamp duty as assessed by the Government Valuer to pave way for registration



of leases and thereafter a transfer of reversionary interest from the 1st Defendant to the 1st Plaintiff, she is unable to do so.

10. The application is opposed by the 1st and 2nd Defendants by way of the replying affidavit of the 1st Defendant's director, Bhavin Ashwin Gudka sworn on February 11, 2022. He deponed that at all material times relevant to the dispute herein and in particular the development of LR 2019/21943 establishing apartments christened "Aura", the 1st Defendant was an investor thus the investment agreement between it and the 1st Plaintiff as opposed to a sale agreement. He further stated that a fundamental breach arose due to variation of the project from one of 32 units to one of 58 units without prior consultation and consent of the 1st Defendant thus the 1st Defendant's claim to have more apartment units allocated to it. He added that the 1st Defendant claimed 11 units assigned to it to be increased to 15. He also stated that payment of Kshs.50 million was a remedy clearly spelt out in the investment agreement.
11. He added that if the agreement between the 1st Defendant and the 1st Plaintiff was a sale agreement, then fraud on the exchequer was committed through sale of a property in parklands area for a miserly Kshs.10,000/=. He stated that submission of the subject leases to the Government valuer in the manner in which the 2nd Plaintiff submitted was aimed at causing harm to the 1st Defendant since the 1st Defendant was not informed and it was exposed to costs that are avoidable.
12. He deponed that whereas the 1st Plaintiff chose to be represented by the 2nd Plaintiff, the 1st Defendant does not, due to various inconsistencies on the 2nd Plaintiff's part which included accounting on collection of rent of 14 apartments allocated to the 1st Defendant which accounts were previously held by Ramesh Sharma Advocate, now deceased; and which matter is in court, being Swami Investments Limited v Violet Maranga & Another where an account of rent collected is sought.
13. He deponed that the Defendants' relationship with the 2nd Plaintiff has irretrievably broken down and therefore the Plaintiff's claim that the application for stamp duty was done in good faith is far-fetched. He added that the relationship between the 1st Plaintiff and the 1st Defendant had also deteriorated over the manner in which the project on LR No.209/21943 was carried out.
14. The Defendants also filed the preliminary objection dated 11th February 2022 in opposition to the summons. It is based on grounds;
 - a. The Plaintiffs lack the standing to perform government and statutory mandated tasks as per the [Kenya Revenue Authority Act](#), 1995, Tax Procedure Act and /or the [Stamp Duty Act](#) Cap 480.
 - b. That the suit and application herein are subjudice as it involves facts and subject matter which issues are directly and substantially under consideration in MCCC/E11313/2021 Swami Investments Limited v Violet Maranga t/a Representative of Ramesh Advocate pending in the Magistrate's court Commercial and Tax Division.
15. I have considered the preliminary objection and the rival submissions. The issues for determination are:-
 - i. Can the Plaintiffs compel the Defendants to pay Stamp Duty?
 - ii. Is the suit sub judice?
16. The Plaintiffs seek to compel the Defendants to pay stamp duty on 14 leases contained in the property known as LR No 209/21943 situate in 1st Parklands Avenue among other prayers. Section 28 of the [Stamp Duty Act](#) and Section 32 of the [Tax Procedures Act](#) No.29 of 2015 stipulate that tax may be recovered by a collector and that it is a debt due to the Government. The Plaintiffs have no capacity



to compel the Defendants to pay tax. The *Tax Procedures Act* specifically provide that a tax collector is responsible for collection. In *Republic v Kenya Revenue Authority Ex-parte Bata Shoe Company (Kenya) Limited* [2014] eKLR, the Court stated:

“This brings me to the role and interpretation of the tax laws. Payment of tax is an obligation imposed by the law. It is not a voluntary activity. That being the case, a taxpayer is not obliged to pay a single coin more than is due to the taxman. The taxman on the other hand is entitled to collect up to the last coin that is due from a taxpayer.”

17. Looking at the agreement exhibited by the 1st Plaintiff and the affidavits filed herein, the Plaintiffs are clearly seeking specific performance being execution of 14 leases and payment of stamp duty by the Defendants. They should have filed an ordinary suit for enforcement of the terms of their investment/sale agreement contract.
18. The Defendants claim that the 1st Plaintiff breached the said agreement. They also claim to be a co – investors of the apartments contained in the suit property. The Defendants contended that they have filed *Swami Investments Limited v Violet Maranga & another* where they seek an account of collected rent of the fourteen apartments. The issues herein would be properly canvassed in that matter.
19. The Supreme Court of Kenya in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] eKLR had occasion to pronounce itself on the subject of sub-judice. It aptly stated:

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”

20. The Defendants have established existence of MCCC/E11313/2021; *Swami Investments Limited v Violet Maranga t/a Representative of Ramesh Advocate* which is between the same parties, over the same subject matter, and it had been filed earlier in a competent court.
21. In conclusion, I find merit in the preliminary objection and the same is upheld. The notice of motion dated January 4, 2022 and the Originating Summons herein are struck out. Each party to bear own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 16TH DAY OF JUNE 2022.

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L. KOMINGOI

JUDGE



In the presence of:-

Ms Rabongo with Ms Maranga for the Plaintiffs

Ms Wanjau for Mr. A. Hassan for the Defendants

No appearance for the Interested parties

Steve - Court Assistant

