



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & TAX DIVISION**

**CIVIL CASE NO. 700 OF 2010**

**ZARA PROPERTIES LIMITED (FORMERLY PROMPT FIRE PTOTECTION LIMITED [C. 106174]).....PLAINTIFF**

**VERSUS**

**THE HONOURABLE ATTORNEY**

**GENERAL.....1<sup>ST</sup> DEFENDANT**

**ZARA PROPERTIES LIMITED (CPR/2010/24490 OF 5<sup>TH</sup> JUNE 2010).....2<sup>ND</sup> DEFENDANT**

**RULING**

The Applicant, Zara Properties Limited filed this suit on 19<sup>th</sup> October 2010, against the Attorney General, and the 2<sup>nd</sup> Defendant/Respondent, praying that the 2<sup>nd</sup> Respondent be compelled through a mandatory injunction to change its name from Zara Properties Limited and be permanently restrained from using the said name, on the ground that the same is undesirable, the Plaintiff/Applicant having (according to the Applicant) been allowed by the Registrar of Companies to change its name from Prompt Fire Protection Limited to Zara Properties Limited prior to the incorporation of the 2<sup>nd</sup> Defendant/Respondent under the same name. Simultaneously with the plaint filed on 19<sup>th</sup> October 2001, the Applicant filed the Chamber Summons dated 19<sup>th</sup> October 2010 in which this Ruling is delivered. The Applicant prays that a temporary injunction do issue, restraining the 2<sup>nd</sup> Respondent either by itself or through others, from using the said name until the hearing of the suit and from dealing in any way with the Applicant's immovable property known as L.R. No. 209/12261.

The application is premised on the grounds, *inter alia*, that the 2<sup>nd</sup> Respondent wrongly acquired the name and is using the same with the intention of secretly acquiring the Applicant's property. To support the application, the Applicant has filed an affidavit sworn by its director, VIHANG JOSHI to which are annexed the following documents;

1. A copy of a letter dated 14<sup>th</sup> October 2009, written by the Applicants' company secretary requesting the Registrar of Companies to confirm that the name Zara Properties Limited was available for registration of a limited liability company
2. A copy of a certificate of change of Name No. C106174 issued on 2<sup>nd</sup> December, 2009 by virtue of which the Applicant changed its name from Prompt Fire Protection Limited to Zara Properties Limited
3. A copy of a certificate of incorporation No. CPR 2010/24490 issued to the 2<sup>nd</sup> Respondent on 5<sup>th</sup> June 2010 confirming its incorporation under the name Zara Properties Limited
4. A copy of a letter dated 23<sup>rd</sup> August 2010, written by M/S Njenga Mbugua & Nyanjua Advocates, for the Applicants, to the Attorney General, with copies to the Registrar of Companies, threatening to sue the Attorney General, the Applicant "*having established that a company by the name ZARA PROPERTIES LIMITED was purportedly incorporated on 5<sup>th</sup> June 2010 while [the Applicant's] issuance of a certificate of change of name was pending*"
5. A copy of a notice to the Attorney General under **Section 13A** of the **Government Proceedings Act** also dated 23<sup>rd</sup> August 2010 and copied to the Registrar of Companies
6. A copy of a letter dated 24<sup>th</sup> August 2010, written by the Senior Deputy Solicitor General to the Registrar of Companies requesting for information as would assist the Attorney General in responding to the Notice issued as per 5 above.
7. A copy of a Grant No. L. R. 123523 issued to ZARA PROPERTIES LIMITED on 21<sup>st</sup> May 2010, but registered in 9<sup>th</sup> June, 2010.

Upon perusal of the supporting affidavit, it has become clear from paragraphs 7 and 8 that the immovable property in question is the subject of

Criminal Investigations. When submitting at the hearing of the application, which was heard ex parte the Attorney General, who did not attend, and the counsel for the 2<sup>nd</sup> Respondent having walked out of court, counsel for the Applicant Mr. Nyamondi stated that the Registrar of Companies had declined the Applicant's requests that action be taken towards regularizing the anomaly caused by the registration of the 2<sup>nd</sup> Respondent in the disputed name, with identical features and objects as those of the Applicant. He blamed the 1<sup>st</sup> Respondent (Attorney General) for the Applicants' predicament, expressing the fear that the title which it holds to the subject immovable property may be lost to the 2<sup>nd</sup> Respondent.

In a letter dated 30<sup>th</sup> August 2010, exhibited herein as annexure "VJ4" to the supporting affidavit, also written by M/S Njenga Mbugua & Nyanjua Advocates, for the Applicant, without making any reference to their letters of 23<sup>rd</sup> August 2010, the said Advocates asked the Registrar of Companies to "*take the necessary steps to rectify the anomaly*" to avoid confusion arising out of the incorporation of the 2<sup>nd</sup> Respondent in the manner complained of, despite the Applicant's being "*issued of a certificate of change of name dated 2<sup>nd</sup> December 2009, following a resolution filed*" with the Registrars' Department. The letter says nothing as to when the alleged resolution was passed or filed with the Registrar of Companies. In the letters of 23<sup>rd</sup> August 2010, however, the same advocates state quite clearly that after the availability of the name ZARA PROPERTIES LIMITED was confirmed,

*"A number of follow-ups at the Companies Registry did not result in issuance of a certificate of change of name as promises of the same have not yielded any positive results"*.

If this was the status as at 23<sup>rd</sup> August 2010, then it beats all logic how the Applicant can truthfully claim to have been issued with the certificate of change of Name on 2<sup>nd</sup> December 2009 as has been deposed to herein. The holding of the certificate exhibited herein as annexure VJ 2 is in itself quite questionable and

should be investigated, alongside the issuance of the Grant registered in the name of ZARA PROPERTIES LIMITED on 9<sup>th</sup> June, 2010.

I am quite convinced that the matters herein hinge upon the acquisition by ZARA PROPERTIES LIMITED, whoever that party may be, of the parcel of land evidenced by the Grant No. L. R. 123523 currently held by the Applicants. I have noted from the record that no summons to enter appearance have been obtained in this case. Further, the Attorney General was neither served with the application nor the hearing notice. Material non-disclosure cannot therefore be ruled out in this application which I find to be gross abuse of the process of the court.

The application is hereby dismissed with no order as to costs. I direct that this ruling be served upon the Attorney General, the Registrar of Companies and the Permanent Secretary, Ministry of Lands in view of my observations.

Orders accordingly.

**DATED, SIGNED and DELIVERED at NAIROBI this 17<sup>TH</sup> day of FEBRUARY, 2011**

**M. G. MUGO**

**JUDGE**

In the presence of:

Mr. Ombok holding brief for Mr. Nyamondi

For the Applicant

No Appearance

For the Respondents