



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ELC. CIVIL CASE NO. 236 OF 2007**

**IMPULSE DEVELOPERS COMPANY  
LIMITED.....PLAINTIFF**

**VERSUS**

**AIRCON ELENTRA SERVICES LIMITED.....1<sup>ST</sup>  
DEFENDANT**

**SOLONGO ENTERPRISES LIMITED.....2<sup>ND</sup>  
DEFENDANT**

**JIM CHOGE.....3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup>  
DEFENDANT**

**RULING**

This is an application brought by the plaintiff herein by way of Notice of Motion under Sections 3 and 3A of the Civil Procedure Act and orders XXIV Rule 6(1) and (2) and L Rules 1 and 2 of the Civil Procedure rules for several orders set out therein the bottom line of which is that this suit be marked as having been settled between the parties herein and judgment entered accordingly.

There are several grounds set out in the said application and a supporting affidavit sworn by William Kabogo Gitau said to be the chairman of the plaintiff. The application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and upon orders being given by this court, counsel appearing for the parties filed written submissions to address the same.

I have related the application to the pleadings herein alongside the authorities that have been cited. At the centre of this dispute is a parcel of land known as LR No. 9042/602 grant IR 99559. There is also in reference to the same parcel of land title No. 9042/686 IR No. 86168.

There are competing interests in respect of the same parcel of land between the plaintiff and the 1<sup>st</sup> defendant. In a lengthy amended plaint dated 17<sup>th</sup> September and filed on 24<sup>th</sup> September, 2007 the plaintiff details its claim thereto as against the defendant herein. At the end of the said plaint, a number of reliefs are sought, particulars of which appear therein. In the present application the plaintiff seeks to rely

on several documents exchanged between the parties and or their advocates. Order XXIV rule 6(1) provides;

***“6(1) Where it is proved to the satisfaction of the court, and the court after hearing the parties directs, that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith”***

Going by the said provisions there has to be a lawful agreement or compromise upon which the court may enter judgment in accordance with the same. My understanding of the requirement of that rule is that, the agreement or compromise must of necessity be clear and unequivocal and not capable of any other interpretation than that, the parties intend to settle or compromise the action. Additionally, such an agreement or compromise must address the entire suit, that is, the pleadings together with all the prayers set out in the plaint. In the event any prayers are left out, the parties cannot be said to have compromised the suit. Above all, a party entering into such an agreement or compromise must show a solid interest in the subject matter because that is the basis of such an action.

The documents referred to in the application have not made reference to the 3<sup>rd</sup> defendant (now deceased) and has conspicuously left out some prayers pleaded by the plaintiff and in particular, the claim for special damages and the invalidity of the title IR No. 86168 LR No. 9042/686 held by the 1<sup>st</sup> defendant. There is also no mention of the claim for mesne profit, general damages or the claim against the Commissioner of Lands represented by the 4<sup>th</sup> defendant.

It is clear to me that, if the plaintiff is intent on relying on the documents alleged to have compromised the suit, this can only be done at a full hearing and for that reason, I do not wish to say more on the said documents because this may prejudice not only the case of the plaintiff, but also the other parties during the main trial.

I am not persuaded therefore that sufficient material has been presented to the court that binds the parties to an agreement or compromise that can compel this court to enter judgment for the plaintiff. The application therefore must fail and is hereby dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

Orders accordingly.

***Dated, signed and delivered at Nairobi this 8<sup>th</sup> day of March, 2011.***

**A. MBOGHOLI MSAGHA**

**JUDGE**