



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL DIVISION
HIGH COURT CIVIL SUIT NO. 148 OF 2011

JITENDRA GOSRANI.....PLAINTIFF

V E R S U S

- 1. AMBER APARTMENTS LTD**
- 2. I.S. MATHARU**
- 3. RASHID**

SUMAR.....DEFENDANTS

R U L I N G

The following brief background to this suit is common ground. Originally, a company called **Ravine Development Limited** was the lessor of the suit premises called **Amber Apartments**. The 1st Defendant, **Amber Apartments Limited** and the Plaintiff, **Jitendra Gosrani**, were the joint lessees of the premises. This lease was governed by a **lease agreement dated 23rd May, 2007**.

Subsequently, Ravine Development Limited sold the suit premises to the 1st Defendant. At the time of filing this suit, there was no longer any tenancy or lease governed by the lease agreement dated 23rd May, 2007.

The relationships at the time of filing suit were as follows. The Plaintiff was a shareholder of the 1st Defendant holding therein certain shares. As already seen the 1st Defendant is the owner of the suit premises called Amber apartments.

The Plaintiff has pleaded that by virtue of his shareholding in the 1st Defendant, he is the legal owner of **Apartment B5** in Amber Apartments. He has also pleaded that by virtue of his ownership of Apartment B5, he holds two adjacent parking spaces in the compound allotted to him by the 1st Defendant.

The Plaintiff's case is that his two motor vehicles have been damaged by mangoes falling from a tree situated in the compound next to his parking spaces, and that he has suffered loss thereby. He has further pleaded that he has raised the issue of pruning the tree with the management committee of the 1st Defendant whose chairman and secretary are the 2nd and 3rd Defendants respectively. He has further pleaded that he has offered to erect a temporary shelter or canopy for his cars at his own cost in order to avoid damage to his cars.

The Plaintiff's complaint is that the Defendants have failed to convene a meeting of the 1st Defendant in order to discuss the issue. He has sought the following main reliefs in the plaint:-

1. Mandatory injunction to compel the Defendants to allow the Plaintiff to construct a temporary shelter or canopy to protect his motor vehicles.
2. Special damages.

The Defendants have now applied by **chamber summons dated 23rd May, 2011** seeking two main orders as follows:-

1. That the suit be stayed or struck out with costs.
2. That the dispute in this suit be resolved in terms of the arbitration clause 4 (ii) of the lease agreement dated 23rd May, 2007 already referred to.

That lease is annexed to the affidavit sworn in support of the Plaintiff's application by **notice of motion dated 18th April, 2011** in which he seeks certain temporary mandatory injunctions. That application is yet to be disposed of.

The main grounds for the Defendants' application are as follows:-

1. That the dispute between the parties touches on the aforesaid lease.
2. That the said lease agreement contains an arbitration clause that provides a mode of settling disputes.
3. That the suit before the court is therefore misconceived and an abuse of the process of the court.

There is a supporting affidavit sworn by the Defendant's counsel.

The Plaintiff has opposed the application as set out in his replying affidavit filed on 25th May, 2011. The main point of objection taken is that the suit is not based on the aforesaid lease agreement.

I have perused all the documents now before the court. I have also considered the submissions of the learned counsels appearing, including the cases cited.

I have no hesitation at all in observing that this is an application that should not have been filed at all and is a waste of the court's time. The lease agreement dated 23rd May, 2007 governed the tenancy between

the then owner of the premises, Ravine Development Limited, on one hand and its then tenants, Amber Apartments Ltd (1st Defendant) and J.J. Gosrani (Plaintiff). As already seen, the Plaintiff subsequently purchased the suit premises from Ravine Development Limited and became the owner thereof. With that purchase, Ravine Development Limited moved out of the picture completely as far as the suit premises were concerned. Its landlord/tenant relationship with Amber Apartments Ltd. and J.J. Gosrani as governed by the lease agreement dated 23rd May, 2007 came to an end.

It appears not to be in dispute that the Plaintiff is a shareholder of the 1st Defendant, and that by virtue of that shareholding he is entitled either to own or occupy Apartment B5 in the same premises together with some two parking lots. Sectional registration of properties has not been pleaded, though it is suggested by the plaint. What is clear is that the relationship between the Plaintiff and the 1st Defendant is one between a shareholder and the company in which he holds shares.

It is therefore beyond me why the Defendants claim that the relationship between the parties in this suit is governed by the lease agreement dated 23rd May, 2007. It is not! It also beats me why the Plaintiff introduced that lease agreement into this suit. It has no relevance at all. It only afforded the Defendants an opportunity to try and use it to get out of the suit the easy way out, thus leading to the present application and a waste of the court's time.

I find no merit in the application. It is hereby dismissed. I will not award the Plaintiff costs of the application because he invited the mischief by introducing the lease agreement into the proceedings. Parties shall bear their own costs of the application.

Those will be the orders of the court.

DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF JULY, 2011

H.P.G. WAWERU
JUDGE.

DELIVERED AT NAIROBI THIS 8TH DAY OF JULY, 2011