



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 248 of 2006

CHEVRON KENYA LIMITED

(FORMERLY CALTEX OIL KENYA LTD)PLAINTIFF

V E R S U S

1. MUVIR HOLDINGS LIMITED

2. CITY COUNCIL OF NAIROBIDEFENDANTS

R U L I N G

In a preliminary ruling delivered on 18th September 2009, following an application by notice of motion dated 19th May 2009, the court (Waweru, J) held that the 1st Defendant had made out a case for variation of the condition imposed by the court for the temporary injunction granted to the Plaintiff against the 1st Defendant by ruling dated 5th and delivered on 6th February, 2009. The temporary injunction restrained the 1st Defendant from, in effect, disposing of or in any manner interfering with the Plaintiffs' quiet enjoyment of the property comprised in land parcel L.R. No. 36/1/929 (I.R No. 23451) situated in Eastleigh, Nairobi pending disposal of the suit. The condition imposed was that the Plaintiff does file, within seven days of delivery of the ruling, an appropriate undertaking to the 1st Defendant for damages. The condition was met.

Upon delivery of the preliminary ruling the court invited the parties to address it as to the nature and extent of variation of the condition. They did so on 23rd September, 2009. I have considered the submissions made on behalf of the parties.

If I understood him right, the Plaintiff's learned counsel is agreeable to an order being made for the Plaintiff to provide monetary security for damages. But he is of the view that there ought first to be an up-dated valuation of the suit property. This was in response to the submission of the 1st Defendant's learned counsel that the Plaintiff ought to be ordered to give security equivalent to the value of the suit property which he put at KShs. 55 million. I have not seen any valuation in the court record that gives this figure.

I have looked at the 1st Defendant's amended statement of defence and counterclaim dated and filed on 14th September, 2007. In the counter-claim the following reliefs are sought:-

- (i) a declaration that the Plaintiff is not entitled to remain in possession of the suit land;
- (ii) an order for the eviction of the Plaintiff from the suit land;

(iii) an appropriate permanent injunction; and

(iv) damages or *mesne* profits.

No particular special loss is pleaded. No value of the property is pleaded either.

What is particularly pleaded is damages (or *mesne* profits) at the monthly rate of KShs. 50,000/00 from the date of filing suit until judgment. What I understood the 1st Defendant's counsel to say is that the 1st Defendant could be awarded damages or *mesne* profits of KShs. 55 million if it succeeded in its counterclaim. Counsel submitted that the Plaintiff ought to be ordered to deposit this sum in an interest-earning account in the joint names of the Plaintiff's and the 1st Defendant's counsels on record as security for damages.

KShs. 55 million would, in my calculation, represent damages or *mesne* profits for 1,100 months (or 91.666 years!) at the rate of KShs. 50,000/00 per month, if they were to be awarded to the 1st Defendant. I did not understand learned counsel for the 1st Defendant to suggest that it could take over 90 years for the case to be heard and determined! Given the current work-load in the High Court, it would probably take about 5 years from the date of filing suit to disposal of the same by trial. It could be disposed of sooner depending on the vigilance of the parties.

Damages or *mesne* profits for 5 years at the rate of KShs. 50,000/00 per month would amount to KShs. 3,000,000/00. I will order that in place of an undertaking as to damages, the Plaintiff shall deposit into court the sum of KShs. 3,000,000/00 within fourteen (14) days of delivery of this ruling as security for damages that may be awarded herein to the 1st Defendant. In default, the temporary injunction granted to it on 6th February, 2009 against the 1st Defendant shall stand vacated. If and once the deposit is made into court, the same may be released by the court into an interest-earning account opened in a reputable bank or financial institution in the joint names of the advocates on record for the Plaintiff and the 1st Defendant.

Costs of this application shall be in the cause. Those shall be the orders of the court.

DATED AT NAIROBI THIS 15TH DAY OF OCTOBER, 2009

H. P. G. WAWERU

J U D G E

DELIVERED THIS 16TH DAY OF OCTOBER, 2009