



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI

Civil Case 65 & 176 of 2006 (Consolidated)

PUGLIESE VITOPLAINTIFF

VERSUS

ESTELA COMPANY LIMITED.....DEFENDANT

R U L I N G

By a Chamber Summons dated 8th June 2006, pursuant to the provisions of Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules, the applicant seeks orders:

1. That this matter be certified as urgent and be heard on an *ex parte* basis in the first instance.
2. That the defendants be ordered by a temporary injunction not to deal in any manner with plot numbers 1788 (original numbers 424/7 and 424/9) Malindi and not to deal with the shares of the defendant's company pending the hearing and disposal of this suit. That the order be served on the Registrar of Titles, Coast and the Registrar of Companies, Nairobi and on M/s Muli & Ole Kina Advocates, Malindi.
3. That the costs of this application be provided for.

The application is based on the grounds that:

- (i) The plaintiff is the administrator of the estate of the late Vincenzo Pugliese (herewith referred to as the deceased).
- (ii) The deceased entered into a contract in writing with the defendant on the 16th day of August 2004 which provided inter-alia, as follows;
 - (a) the deceased advanced to the defendant 88,800 Euros and the defendant was to repay the same before 15th August 2005.
 - (b) as security for the said advance the defendant was to execute transfers of its shares in the 2 plots owned by the defendant, to wit, plots numbers 1788 and 1790, Malindi in favour of the plaintiff which plaintiffs were to be automatically transferred to the deceased upon the expiry of a thirty (30) days notice to redeem having been issued.

(c) the defendants were served with a thirty (30) days notice by Wasunna Kiamba & Company advocates for the plaintiff on 6th March, 2006 but the defendant has not paid even a single Euro to the plaintiff.

(iii) the defendant's actions are highly suspicious. It has approached even an agent who is in the process of looking for a buyer of the said plots.

(iv) that my attempts to obtain the security documents from the defendant's advocates have been answered in vague and general manners.

(v) that it is appropriate to issue injunction orders as prayed for to forestall likelihood of irreparable harm being visited on the plaintiffs.

The application is predicated upon the contents of the affidavit of Pugliese Vito sworn on 8th June 2006.

The respondent, despite service, filed no grounds of opposition or replying affidavit. The application thus proceeded ex parte in terms of the provisions of Order L. Rule 16(3)

On behalf of the applicant, it was argued that the applicant is the administrator of the estate of his late father, Vincenzo Pugliese [hereinafter referred to as the deceased] as per copy of letters of administration marked as exhibit "B".

That the deceased, at the request of the defendant, advanced the defendant the sum of Euro-88,800/= as per copy of the agreement marked as exhibit "C".

That the defendant did not pay the said sum, or any other sum or at all, as agreed on 6th March, 2006. The applicant through M/s Wasuna, Kiamba Advocates, sent a 30days' notice of demand marked exhibit "D". The said notice expired on 6th April 2006, and the defendant has not paid anything to date.

That the securities for the payment of the advanced sum, as per the agreement, were parcels of land known as portions Nos. 1788 and 1790 [original Nos. 424/7 and 424/9 Malindi].

That recently a Mr. Mutunga, a land agent, informed him that the aforementioned parcels are on sale. When he called the respondent, he realized that he was very evasive. The evasiveness of the respondent made him to believe that he (respondent) is up to no good. He verily believes that the respondent is quietly trying to sell the properties which comprise the security. That the two properties aforementioned are the only assets of the defendant. If sold, the applicant will be left with no remedy hence this application.

I have carefully analyzed the application, the affidavit in support and the law on the point. Having done so, I am of the considered view that the applicant has made a prima facie case with a probability of success. There being no grounds of opposition or replying affidavit, I have no evidence in rebuttal before me. Accordingly I grant the application in terms of prayer 2 only. Costs shall be in the cause.

DATED and DELIVERED at Malindi this 20th day of February 2007.

N. R. O. Ombija

JUDGE

Mr. Mouko } Respondent

Mr. Muranje} For Applicant