



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Civil Case 108 of 2007

NYONAKA LIMITED ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ALICE WAIRIMU MWANGI

ROSEMARY KAGURE MAINA ::::::::::::::::::::::::::: DEFENDANTS

RULING

The Plaintiff is the registered proprietor of **ALL THAT** piece of land situate at Changamwe Miritini and known as subdivision No. 217, Section V Mombasa comprising 4.6 acres or thereabouts (the suit piece of land). It has been so registered since 8th August 1996 after buying the same from Stanely Robert Matano and Ruth Matano (the Matanos). On a visit to the piece of land on or about the 1st May 2007 a representative of the Plaintiff found the Defendants and others constructing buildings on it. The Plaintiff immediately thereafter filed this suit and sought in the main a mandatory injunction to have the Defendants evicted from the land and their structures demolished.

Along with the filing of this suit the Plaintiffs applied for injunctions on similar terms.

Upon being served with the application and the summons to enter appearance the first and second Defendants filed a defence and the second Defendant swore a replying affidavit in both of which they alleged that they know the suit piece of land as belonging to the Matanos and that they are lessees for value of the Matanos. They further claim that upon information given by the Matanos the Plaintiff's acquisition of the land from the Matanos was fraudulent in that the Plaintiff did not pay the full purchase price to the Matanos and that the latter's signatures on the transfer are forgeries and that they will apply to have the Matanos enjoined as Defendants in this suit. They have made good of that threat and have applied to have the Matanos enjoined as Defendants in this case. This ruling is on that application.

Annexed to the affidavit of the second Defendant in support of the application are lease agreements dated

12th October 2005, 17th January 2006 and 17th March 2006 that she entered into with Ruth Matano for the lease of portions of the suit piece of land. In view of these documents Mr. Molenje, counsel for the Defendants urged me to allow this application and have the Matanos enjoined to these proceedings as Defendants so that the issue of ownership of the suit piece of land can be resolved once and for all.

The Plaintiff strongly opposes this application. Relying on the replying affidavit of Rahab Nyokabi Waitete Mr. Ochwa, counsel for the Plaintiff, argued that joining the Matanos to this suit will not add value to this case but will instead cloud the issues in controversy. If there was any breach of contract, he further argued, the Matanos could not have waited for over 10 years to sue.

The court has a wide discretion under Order I Rules 3, 13 and 22 of the Civil Procedure Rules under which this application is made either on its own motion or on application by any party to enjoin any other party into a suit for the effective determination of the issues in controversy. But that discretion has to be exercised in accordance with the law.

In this case the sale by the Matanos of the suit piece of land to the Plaintiff was in 1990. Any claim by the Matanos of breach of contract is therefore time barred under the Limitation of Actions Act. I agree with counsel for the Plaintiff that to enjoin the Matanos in this suit will not only cloud the issues but will also give license to the Matanos to urge an otherwise time barred claim. Consequently I dismiss the application with costs.

DATED and delivered this 18th day of December 2007.

D.K. MARAGA

JUDGE