

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL SUIT NO. 117 OF 2004

KAREN ROSES LIMITEDPLAINTIFF

V E R S U S

ATTORNEY GENERAL 1ST DEFENDANT

DISTRICT COMMISSIONER U.G. DISTRICT 2ND DEFENDANT

DIVISIONAL CRIMINAL INVESTIGATION OFFICER..... .3RD DEFENDANT

THE PUBLIC WORKS OFFICER – U.G. 4TH DEFENDANT

THE OFFICER COMMANDING POLICE STATION ELD. 5TH DEFENDANT

R U L I N G

Karen Roses Limited (hereinafter called “the Plaintiff”) instituted this suit against the Attorney General, the District Commissioner Uasin Gishu District, the Divisional Criminal Investigations Officer, Eldoret, the Public Works Officer, Uasin Gishu District and the Officer Commanding Police Station – Eldoret (hereinafter referred to as the 1st - 5th defendants respectively) on 24/9/2004. The Plaintiff who claims to be the registered proprietor of the premises known as Eldoret Municipality Block 4/100 (subject property) avers that the 32nd(sic) – 5th defendants, unlawfully and without any colour of right caused the trespass of the subject property by forcefully occupying the same and thereby preventing it from enjoyment and use of the same. It therefore prays for inter alia, their eviction, a permanent injunction and damages for trespass. At the time when it filed its suit, it also moved the court under a certificate of urgency and applied for temporary orders to restrain the defendants from inter alia occupying, encroaching trespassing, fencing off, selling, transferring or dealing with the property in any manner. The Court however declined to grant the orders ex –parte and ordered that the application be served for inter parties hearing. Though served, the defendants raised no objections, nor did they appear in court on 7/12/2004 for the hearing of the application. The plaintiff then obtained the restraining orders pending the hearing and determination of the suit.

Be that as it may, one Stephen Mathenge Wanjohi, moved the court on 15/12/2004 in an application seeking to be joined in the suit as a defendant. He also sought other orders, these being, for a temporary stay of the restraining orders mentioned hereinabove, as well as an order to discharge or set aside the orders of 7/10/2004 (sic) which two orders, in my humble opinion, cannot be dealt with at this stage as he is not yet a party to the suit. They can only be canvassed by him after the court allows his application and orders that he be joined as a defendant.

He bases his application on various grounds, and it is his contention that he was irregularly and maliciously excluded from these proceedings. It is also his contention that the plaintiff stands to suffer no prejudice if his application is allowed. The application is however opposed by the plaintiff who in its preliminary objection, urges the court to dismiss the application on the grounds that Wanjohi (hereinafter called ‘the applicant’), has no locus standi, that he has no private interest or right to protect and that not only is his application bad and defective but that the plaintiff has an overriding interest in the subject property.

I have taken into account the submissions by both very able counsels. It cannot escape one’s attention, that this applicant bases his application on the grounds that not only is he a civil servant, but that he was

allocated with the house which is situated on the subject property, when he moved to Eldoret on official duties. It is also evident that he occupies the same in his belief that it is a Government house, which latter fact is denied by the Plaintiff. I was referred to several cases by Mr. Omwenga, learned counsel for the Plaintiff but the real matter in issue in this application is whether this applicant can qualify for the orders that he seeks, and whether the applicant who is a Civil Servant would have locus in this matter.

It cannot be gainsaid that he is a Public officer whose conduct in matters of court proceedings is governed by the Code of Regulations as subsists between the Government of Kenya and all its officers who include this applicant. Of particular importance and relevance to this application is Regulation G 54 thereof which stipulates that:

“No officer shall institute civil proceedings arising out of any circumstances connected with his official position, or with any activity in which he has been engaged in the course of his official duties, without first obtaining the written consent of the Attorney-General to the institution of such proceedings, whether or not he desires legal aid. In purely private proceedings, however, unconnected with their official position or duties, officers do not require the consent of the Government. In such private litigation, the question of legal aid by Government does not, of course arise.”

The pleadings on record reveal that the applicant occupies the subject property by virtue of the fact that he is a Public Servant who was allocated with the same upon transfer to Eldoret. In my opinion, the occupation is connected with his official position. Despite the clear application of the above provisions, this applicant has not demonstrated that he has the written consent of the Attorney General to commence this application.

I find that without the abovementioned consent, he would have no locus standi in this matter and it can only be concluded that his application lacks in merit. I do therefore dismiss this application with costs.

Dated and Delivered at Eldoret this 26th day of January 2005

JEANNE GACHECHE
JUDGE

Delivered in the presence of: