



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 907 OF 2004

REGENT MANAGEMENT LIMITEDPLAINTIFF

VERSUS

NATIONAL HOSPITAL INSURANCE FUND

BOARD OF MANAGEMENT..... DEFENDANT

RULING

The Applicant applies by its Chamber summons of the 23/8/2004 for restraining Orders in terms of prayers 2a and (b) as follows:

(a) An order of injunction restraining the Defendant whether by itself or its Servants or Agents or any other person acting for and/or on its behalf, from doing the following acts or any of them, that is say

from terminating the Management, Contract dated 20th December, 2001 and./or in any way howsoever, whatsoever interfering with the Plaintiff's contractual management duties at the "**Medicare Plaza/NHIF Building**" premises including management, maintaining the building, plant machinery and equipment, security tenants, collecting rent and service charges, repairs caretaking, accessories purchases and marketing on **ALL THAT** property comprised in LR NO.209/11248 situated at the junction of Haile Selassie Avenue and Ragati Road in within Nairobi District (hereinafter referred to as "the said property")

(b) An order of injunction restraining the Defendant whether by itself or its Servant or Agents or any other person acting for and/or on its behalf, from commencing, negotiating, entering into, registering or otherwise recognizing any other management contract other than the management contract dated 20th December, 2001 between it and the Plaintiff, or inviting and/or accepting offers, tendering,

employing, contracting, outsourcing or hiring any services whatsoever in respect of or pertaining to the management of the said property, or dealing whatsoever in any way howsoever, whatsoever interfering, with the Plaintiff's contractual duties as the said property including management, maintaining the building, plant, machinery and equipment, securing tenants, colleting rent and service charges, repairs, care-taking, accessories purchases and marketing on **ALL THAT** property comprised in **LR NO.209/11248** situated in the City of Nairobi

in Nairobi Area, (hereinafter referred to as “the property”)

The Applicant and Respondents entered into a contract for management for Medicare Plaza LR No.209/11248 (the Property) dated the 20/12/2001 by which the Applicant was appointed a Manager of the Property for a period of 5 years from the 1/11/2001 expiring on the 30/10/2006.

The Agreement provided in Clause 4 for early termination of the Agreement

It is not in dispute that the Applicant is not guilty of any of the matters contained in Clause 4, which would give the Respondent the right to terminate the Agreement thereunder.

The Respondent however wrote to the Applicant on the 28/7/2004 a letter which stated as follows:-

“We refer to the contract for Letting and Management of Medicare Plaza now known as NHIF Building

TAKE NOTICE that we wish to terminate the said contract between the Fund and yourselves.

We hereby give you three months notice with effect from 1st August 2004, of termination of the contract

. Kindly provide us with the Books of Accounts and all other relevant records and documentation herein to enable us take further action.”

The Applicants say that the purported termination of the Agreement is prima facie unlawful and that they are entitled to an injunction to restrain the proposed breach of the Agreement. Order 39 sub-rule 2 states as follows:-`

“In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right ”

Does the Applicant have a prima facie case with a probability of success or would damages be an adequate remedy.

The Respondent filed a Replying Affidavit in which Dr. Hassan the Chief Executive of the Defendant deponed that the termination procedure in the Agreement is not the only way in which termination can arise and that in the absence of goodwill between the parties there is grave danger of the property being sabotaged. He further dopones that the only loss the Applicant will suffer is pecuniary

The Applicant relied on several cases including Devani v Bhadresa and Another 1971 EALR at page 22 where Law Ag. VP at page 25 states:-

“ A Judge must where there is a plain and uncontested breach of a clear covenant, compel the Defendant by interlocutory injunction to perform his obligation without regard to the balance of convenience”

The Applicant’s Agreement appoints them as Managers of the property. They have no proprietary rights in it.

From a reading of the Agreement there is no procedure for terminating it by Notice and as none of the reasons for termination are either alleged or relied on prima facie the Respondent is attempting to breach the Agreement.

I must however decide whether damages would be an adequate remedy. The Agreement provides for the Remuneration of the Applicant. However if the Applicant had to prove such damages it would not be able to obtain them until the hearing of the suit whereas if the Agreement continues it has a present right to payment of the sums it is entitled to immediately.

Having regard to the situation of both parties the Respondent would suffer no inconvenience in having the Applicant continue to manage the property. Although the Respondent talks of sabotage there is no evidence of any such thing having happened and there is no evidence that it will in future.

In the absence of an allegation of any breach by the Applicant of the terms of the Agreement I can only presume that the Applicant had carried out its duties in a satisfactory manner.

It is not sufficient reason to allow the Respondent to breach the contract by terminating it prematurely and without lawful justification by saying that the Respondent has lost confidence on the Applicant.

In my view this is a case where it would be proper for a court to restrain a breach of the Agreement and I therefore do so and grant the prayers sought for in the Application. The costs will be in the cause.
Dated and delivered at Nairobi this 14th day of October 2004

P.J. RANSLEY

JUDGE