

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT NAIROBI
CIVIL SUIT NO. 676 OF 2003**

PETER NJOROGE WAINAINA T/A

BONG INVESTMENTS.....PLAINTIFF

VERSUS

CIRIO DELMONTE (K) LTD.....DEFENDANT

RULING

By this application filed on 22nd April, 2002 but dated 19th April, 2002, the applicant, **PETER NJOROGE WAINAINA T/A BONG INVESTMENTS**, seeks an order against the respondent, **CIRIO DEL MONTE (KENYA) LIMITED** to be restrained from the applicants property known as **THIKA MUNICIPALITY/BLOCK14/88** as the property belongs to its principal, **DATURA EAST AFRICA LIMITED** whose authority had not been obtained by the respondent. On the other hand it is the respondents' case that that the suit premises are Government land whose authority it has to remove wastes produced thereon by government stone cutters.

On the affidavit evidence, the applicants case is that it has authority to act for Datura East Africa Ltd. Who are said to be based in Nakuru and are the owners of the suit premises which appears to be a quarry. To support its case it produced a Certificate of Lease for same said to have been issued on 15th November, 1999 for 99 years as from 1st May, 1991 and a resolution of the company. It is alleged that the respondent was trespassing on the premises by cutting stones and carrying away the blocks and quarry waste there from and that he had been authorized by the proprietor to protect its interest on the land. The respondent's case is however that the land was unsurveyed government land and that the alleged title and lease does not exist at the land registry for Thika District. To support its case, it produced a search certificate which showed that no such title existed and letters from the police and the prisons department contending that the land on which the stones have being cut belonged to the government and was in their possession and/or occupation or use.

As can be seen, it is not clear if the land in dispute is or is not government land as no survey map or certified copy of the registrar has been attached to the application. The registered owner has also not produced any evidence from the Registrar of Companies to show that it exists nor has it given a registered power of attorney to enable the plaintiff to file the case on its behalf claiming land. The case as it stands therefore does not appear to have much likelihood of success.

It is also observed that it is not the defendant that is cutting the stones and is merely collecting quarry waste. If the applicant's suit is ultimately successful then it could be compensated by the monetary value of the waste collected by the respondent. The loss, which the applicant is likely to suffer, can therefore be adequately compensated by an award of damages.

Even if there exists a doubt, it is observed that the land has been unutilized by the applicant's principal for long. During all this time, the prisons have been utilizing it for carrying out hard labour on prisoners sentenced to such punishment and the respondent has on its part been collecting the waste to keep the area accessible. If the orders are granted the operations of the prisons department could be affected. The applicant would not however suffer as prejudice as it has never put the land to any use. The balance of convenience therefore tilts in favour of the respondent.

On account of the above, I hold that the applicant has not made out a case for an interlocutory

injunction and I hereby dismiss this application with costs.

Orders accordingly.

Dated and delivered this 9th day, April, 2003.

G.P. Mbito

JUDGE