



Gitonga & 11 others (Suing as the Registered Unit Owners of aPartments at the Suit Properties Known as Morningside Park Apartments) v Morningside Heights Limited & 4 others (Environment & Land Case E169 of 2023) [2024] KEELC 3656 (KLR) (2 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3656 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E169 OF 2023**

MD MWANGI, J

MAY 2, 2024

BETWEEN

ELIAS GITONGA 1ST PLAINTIFF
JESSE KAGOMA 2ND PLAINTIFF
MOSES MPURIA 3RD PLAINTIFF
CAROLINE MWONGERA 4TH PLAINTIFF
VIVIAN NG'ENI 5TH PLAINTIFF
JOHN MURUGU 6TH PLAINTIFF
HUMPHREY MBUGUA 7TH PLAINTIFF
JOYCE MBUGUA 8TH PLAINTIFF
ANDREW GATHECA 9TH PLAINTIFF
JOYCE NJUGUNA 10TH PLAINTIFF
DIAKEN LTD 11TH PLAINTIFF
TRIPLE BATTALION ENTERPRISES LTD 12TH PLAINTIFF
**SUING AS THE REGISTERED UNIT OWNERS OF APARTMENTS AT THE
SUIT PROPERTIES KNOWN AS MORNINGSIDE PARK APARTMENTS**

AND

MORNINGSIDE HEIGHTS LIMITED 1ST DEFENDANT
MORNINGSIDE HEIGHTS (MANAGEMENT) LIMITED 2ND DEFENDANT
**MORNINGSIDE HEIGHTS MANAGEMENT TOWERS B) LIMITED 3RD
DEFENDANT**



STEPHEN NJOROGE KARANJA 4TH DEFENDANT

WILLIAM KIMANI RICHU 5TH DEFENDANT

(In respect of the Application dated 13th October, 2023 and the one dated 6th February, 2024)

RULING

1. The application dated 13th October 2023 was filed by the Plaintiffs in this case seeking a variety of orders, namely:
 - a. That this Honourable Court do issue a temporary injunction restraining the Defendants/Respondents whether by themselves, their servants, agents, employees or in any way howsoever from levying and collecting Service and other charges from the Plaintiffs/Applicants.
 - b. That this Honourable Court do issue a mandatory injunction directing the Defendants/Respondents to avail to the Plaintiffs/Applicants audited Statement of Accounts for the financial years 2018, 2019, 2020, 2021, 2022 and 2023 within fourteen (14) days of the orders of the Honourable Court together with copies of all the service contracts and receipts for the expenses incurred in the utilization of Service and other charges in respect of the Suit Properties.
 - c. That this Honourable Court do issue a temporary injunction restraining the Defendants/Respondents whether by themselves, their agents, servants, employees, proxies and/or any person claiming under them from being signatories of the bank accounts where the Service and other charges are deposited pending the hearing and determination of the main suit.
 - d. That pending the hearing and determination of the main suit, an order directing That Interim Board be the only signatories in full control of the bank account where the Service and other charges levied on the Plaintiffs/Applicants are deposited.
 - e. That pending the hearing and determination of this suit, a mandatory injunctive order do issue directing the Defendants/Respondents to convene a first General Meeting of the Management Corporation of the registered unit owners within seven (7) days of the orders of the Court and to circulate with the notice, an agenda for the first General Meeting called to include as the main agenda the formation of a proper Board of the Management Corporation in accordance with section 26 of the Sectional Properties Act, 2020 with all unit owners being notified of their right to vote.
 - f. That this Honourable Court do issue a mandatory injunctive order directing the Defendants/Respondents to supervise the election of a proper Board of Management Corporation of the Suit Properties at or during the first General Meeting in (6) above.
 - g. That pending the hearing and determination of this suit, a mandatory injunctive order do issue directing the Defendants/Respondents to formally



and or officially hand over all the common property, documents and or other official records including the audited Statement of Accounts and the Certificate of Registration of the Management Corporation to the elected Board of the Management Corporation in (7) above.

- h. That this Honourable Court do issue a mandatory injunction restraining the Defendants/Respondents whether by themselves, their agents, servants, employees, proxies and/or any person claiming under them from interfering with, impeding, frustrating and or constraining the performance of the duties of the Management Corporation at the Suit Properties.
2. The orders sought in the application dated 13th October, 2023 are clearly final in nature. They are the same orders sought in the plaint. They surely cannot and should not be granted at the interim stage of these proceedings otherwise the suit will have been disposed of summarily. As Ringera J (as he then was), correctly noted in the case of *Airland Tours and Travel Limited v National Industrial Credit Bank Nairobi*, Milimani HCCC No. 1234 of 2002), in an interlocutory application, the Court is not required to make any conclusive or definitive findings of fact or law; ‘not on the basis of contradictory affidavit evidence or disputed propositions of the law presented by opposing parties without the benefit of a full hearing’.
3. Indeed, at this stage, the Court should not even make any comments or findings or express opinions on the substantive issues in controversy to avoid hurting the trial. Accordingly, my finding is That the application dated is dated 13th October, 2023 is unmerited.
4. The interim issues raised in the latter application dated 6th February 2024, filed by the 1st Plaintiff, relating to the issue of disconnection of water supply to unit No. 504 were addressed by the Court’s directions of 12th February, 2024. The court on the said date directed the 1st Plaintiff/Applicant to pay a sum of Kshs 50,000/- to the Advocates for the Respondents to hold as a security pending the hearing and determination of the application. The amount was to be paid in the next 48 hours from the time the order was made. Upon the payment, the interested parties were to restore and reconnect the water supply to the 1st Plaintiff’s unit No. 504. Parties duly complied with the court’s directions.
5. The court is keen on the expeditious hearing and determination of the main suit herein. It will dispense with these preliminary issues and proceed to issue directions to facilitate the expeditious disposal of the main suit. Accordingly, the court directs That the Advocates for the Respondents will continue holding the sum of Kshs 50,000/- paid by the 1st Plaintiff, as security for the water charges pending hearing and determination of this suit.
6. I don’t consider it appropriate or necessary to issue any further orders in this matter at this point in time. The status quo prevailing should be maintained.
7. In the meantime, I direct parties to file their compliance documents in the next 30 days from the date of this ruling to expedite the hearing of this case.
8. The two applications are dispensed with in terms of the above orders and directions. There shall be no orders as to costs in respect to the two applications.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 2ND DAY OF MAY, 2024.

M.D. MWANGI



JUDGE.

In the virtual presence of:

Mr. Muriithi for the 1st Plaintiff

Mr. Mwangi for the 1st Defendant/Respondent

Mr. Muriithi also holding brief for Mr. Ntoogo for the 2nd - 12th Plaintiffs

Yvette: Court Assistant

M.D. MWANGI

JUDGE.

