



Royal Platinum Management Ltd v Royal Modern Homes Ltd (Environment & Land Case E065 of 2023) [2023] KEELC 21565 (KLR) (14 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21565 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E065 OF 2023
AA OMOLLO, J
NOVEMBER 14, 2023**

BETWEEN

ROYAL PLATINUM MANAGEMENT LTD PLAINTIFF

AND

ROYAL MODERN HOMES LTD DEFENDANT

RULING

1. The Plaintiff filed the notice application dated 21st February 2023 under the provisions of Order 40 seeking restraining orders against the Defendant pending hearing and determination of the suit.
2. The Defendant filed a replying affidavit sworn by its director Mr Salat Dahir Osman deposing that the Defendant had obtained all the requisite approvals for their development. That the EIA was conducted in accordance with the law and public participation took place.
3. The Defendant also filed its application dated 27th February 2023 under the provisions of order 10, 12, and 40 rule 7 of the [Civil Procedure Rules](#) seeking orders that the interim orders of injunction issued on 21st February 2023 be discharged and or set aside. The application was supported by the grounds listed on its face.
4. Yet again, the Plaintiff filed the application dated 27th April 2023 under the provisions of order 40 and 10 of [Civil Procedure Rules](#) and section 3A of the [Civil Procedure Act](#); Regulations under EMCA. The application sought almost similar orders as the one of 21st February except for additional prayer under paragraph 6 which sought to have Salat Dahir Osman cited for contempt and punishment meted on him forthwith.
5. On 19th June 2023, the parties agreed that all the three applications be heard together. The parties agreed to file their respective responses as well as written submissions. It is only the Plaintiff's submissions dated 31st August 2023 which are available on the court portal. The Plaintiff raised two main questions for determination;



- i. Whether the Plaintiff has met the threshold to be granted interlocutory injunction
 - ii. Whether the interim orders of injunction issued should be vacated
6. In his submissions, the Plaintiff gave a background of their case stating that Royal Residency has 108 apartment units built on L.R. No 209/20181 which is adjacent to the Defendant's parcel of land L.R. No 209/1451/5. That in May 2021, the Defendant undertook excavations on their property without obtaining the requisite approval licenses and if any was obtained, the same was obtained irregularly. That on 19th July 2022, the Defendant was served with an enforcement notice by the Nairobi Metropolitan Services.
 7. The Applicant submitted they have laid a prima facie case stating that, due to the Defendant's reckless and negligent actions, the Applicant's wall abutting the Defendant's plot collapsed on 27th August 2022 and caused damage to the entire electrical connection, plumbing connections and sewerage and drainage connections. The Plaintiff stated that they held a meeting with the Defendant/Respondent and the Respondent agreed to reconstruct the wall as well as maintain (3) to (4) metres from the Applicant's boundary which promise the Respondent is yet to fulfil. The Plaintiff submitted that by reason of the, collapse of their wall, their premises have been exposed to serious security risks, intolerable noise and unsightly sledge emanating from the Respondent's construction site.
 8. The Plaintiff added that the Defendant has been excavating/constructing at night and emitting excessive noise and vibrations, causing annoyance and disturbances to the residents of Royal Residency and in breach of the terms of the licences issued by NEMA and NCA. Under the heading of irreparable loss, the Applicant cited the case of *Olympic Sports House Ltd vs School Equipment Centre Ltd Civil* (2012) eKLR where Mabeya J cited case of *Loldiaga Hills Ltd & 2 others –vs- James Wells & 3 others* (UR), I held that:

‘... an injunction will not normally be granted’ it is my understanding of the said portion of the Court of Appeal for East Africa's holding to mean that there may be circumstances where although damages may be adequate but nevertheless an injunction would issue. Each case has to be dealt with according to its own peculiar circumstances.”
 9. The Plaintiff argued that the Respondent will be committing an illegality if they proceed with the illegal excavation and construction activities which have deprived them (Applicant) of their right to privacy and enjoyment of their residential properties. That the Defendant had no regard for the feelings and sentiments of the rest of the residents within the neighbourhood and their proprietary rights.
 10. The court is invited to consider and determine whether the Plaintiff's application has met the threshold for granting of a temporary order of injunction and if not, whether the interim order of injunction in place should be set aside. The principles governing issuance of temporary orders of injunction are settled under the headings of; proof of prima facie case, irreparable loss and in whose favour the balance of convenience tilts.
 11. It is common ground that the Plaintiff's land and the Defendant's land are adjacent to each other. It is also common ground that the Defendant is undertaking some construction on their land L.R no 209/1451/5. Further, it is not in dispute that part of the Plaintiff's perimeter wall collapsed. The Respondent stated that the said wall collapsed because it was built on a loose soil and that they had taken necessary steps to mitigate the damage. The Respondent denied carrying out night excavations, and stated that on the days complained of, the Defendant was under instruction from the Parklands Sub-county City Council in reference to a meeting at the Plaintiff's premises that resolved they hurry



- up and complete the reinforced walls along Block F of Royal Residency which works is already done and completed.
12. The Respondent deposed further that the excavation works were already finished and currently it is the concrete works going on L.R. No 209/1451/5 with no columns exposed since excavation works were completed.
 13. In the application dated 21st February, the Plaintiff wants this court to stop what they termed as illegal excavations/constructions on L.R. No 209/1451/5 as well as to direct the Defendant to keep and maintain a distance of 3-4 meters from the Applicant's boundary wall once it acquires the requisite approvals. In the subsequent application of 27th April 2023, the Plaintiff/Applicant seems to acknowledge that the Defendant had obtained approvals when they depose that the night excavations was contrary to the permits issued by NEMA and NCA (at paragraph 5 of the affidavit in support of that motion).
 14. One of the grounds presented in support of the orders sought in the motion of 21st February 2023 was that the deep excavations were done without obtaining the requisite approval which ground has been rebutted. Another ground was that the excavation works were posing glaring danger to the structures and utilities on the abutting land. Some of the dangers experienced by the Plaintiff was the collapsing of part of their wall, which according to the Defendant has been mitigated. The Respondent went further to annex what they called the progress report in ascertaining that the excavation works are indeed completed.
 15. The Applicant/Plaintiff has not clearly demonstrated that the Defendant's construction is being undertaken next to the boundary wall of their land with a proximity of less than 3-4 meters. Secondly, it would require a basis to be given support the request to do excavation 3-4 metres away from their wall which justification has not been provided. In any event, the Respondent stated that the excavations are already completed.
 16. In light of my analysis of the pleadings, it is my finding that prayers 2, 3 and 5 of the motion dated 21st February 2023 is without merit. Prayer 4 is deemed as done since the Defendant stated that the collapsed perimeter wall is already reinforced and put up. If the same has not been done, the orders are granted. Prayer 6 of that motion requires proof and so the Applicants should pursue it in the main suit. It is declined at this stage.
 17. In respect to the application dated 27th April 2023, I grant prayer 3 thereof so that the Defendant shall not carry out any construction work (whether excavation or otherwise) at night and or outside the licensed hours on L.R No. 209/1451/5. The constructions shall comply with the conditions set forth in the NCA certificate of compliance. The remainder of the prayers 4-6 are declined for want of merit.
 18. The Defendant's application dated 27th February 2023 is not granted for want of merit.
 19. Costs of the application to the Plaintiff

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH NOVEMBER, 2023

A. OMOLLO

JUDGE

