



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 206 OF 2016

TINA HOLDINGS LIMITED.....PLAINTIFF/APPLICANT

VERSUS

HOUSING FINANCE COMPANY OF KENYA (HFCK).....DEFENDANT

RULING

1. In the Notice of Motion dated 28th February, 2018, the Plaintiff has sought for the following reliefs:

a. That leave be granted to the Plaintiff to amend its Complaint and also include the name of Hotel Connections Limited as the 2nd Defendant in this suit in accordance with the Draft Amended Complaint annexed hereto.

b. That the draft Amended Complaint be deemed duly filed upon payment of requisite filing fees.

2. The Application is supported by the Affidavit of the Plaintiff's Director who has deposed that the Plaintiff intends to enjoin Hotel Connections Limited as a party to the suit because the 1st Defendant has since transferred the suit property to the Proposed 2nd Defendant.

3. The Plaintiff's Director finally deposed that the actions of the 1st Defendant and the Intended 2nd Defendant are meant to steal a match against the Plaintiff; that the actions of the 1st Plaintiff in transferring the suit property to the Proposed 2nd Defendant while the suit is pending are unlawful and that the Defendant will not be prejudiced by the orders sought.

4. In reply, the Proposed 2nd Defendant's Director deposed that the Proposed 2nd Defendant is a *bona fide* purchaser for value of the suit property, having purchased the same at a public auction and that the said public auction was pursuant to the 1st Defendant's statutory power of sale.

5. According to the Proposed 2nd Defendant's Director, Hotel Connections Limited was registered as the owner of the suit property upon purchase of the same; that as at the time it purchased the suit property, there was no court order barring the transfer of the land to the Company and that the amendments being sought are misplaced because Hotel Connections Limited is not a necessary party in this suit.

6. The Proposed 2nd Defendant's Director finally deposed that the particulars of the alleged illegality, malice and fraud sought to be introduced on the part of Hotel Connections Limited are far-fetched, frivolous and vexatious and that if the Application is allowed, the Plaintiff should be directed to furnish to the Company adequate security for costs. Both the Plaintiff's and the Proposed 2nd Defendant's advocates filed submissions which I have considered.

7. This suit was commenced by way of a Complaint dated 25th November, 2015. In the Complaint, the Plaintiff averred that it is the proprietor of land known as Athi River/Athi River Block 1/87 (*the suit property*) and that the purchase price for the suit property was partly funded by ABC Bank.

8. The Plaintiff's case is that having considered the Defendant's terms, which included long term financing, the Plaintiff agreed to move all its banking facilities from ABC Bank to the Defendant and that on 11th November, 2014, the Defendant took over the Plaintiff's banking facilities held by ABC Bank including the suit property.

9. The Plaintiff has accused the Defendant of selling the suit property in a public auction conducted on 12th October, 2016, and is seeking for the following orders:

a. A declaration that the auction conducted on 12th October, 2016 is illegal.

b. The Defendant be and is hereby restrained either by themselves, their agents and or servants, from completing any form of conveyance, transfer and or executing any form of transfer relating to the suit property as a result of the auction conducted on 12th October, 2016.

10. The record shows that before the Plaintiff's Application dated 25th November, 2016 for injunctive orders could be heard and determined, the Defendant sold the suit property to the proposed 2nd Defendant by way of public auction.

11. Indeed, the sale of the suit property to the 2nd Defendant by way of a public auction is captured in the Proposed 2nd Defendant's Director's Further Affidavit sworn on 31st March, 2017 in which he stated as follows:

"...I wish to state that the Proposed Interested Party has since been lawfully and regularly registered as the sole proprietor of the suit property namely, land Title Number, Athi River/Athi River Block 1/87."

12. Indeed, the Proposed 2nd Defendant annexed on its Further Affidavit the Title Deed in respect of the suit property showing that it was registered as the proprietor of the same on 27th February, 2017, way after this suit challenging the scheduled sale of the suit property by way of public auction had been filed.

13. In fact, the record shows that on 17th February, 2017, the Proposed 2nd Defendant filed an Application dated 17th February, 2017 seeking to be enjoined in this suit as an Interested Party. That Application was allowed by this court on 21st February, 2017.

14. While applying to be enjoined in this suit as an Interested Party, the Proposed 2nd Defendant' Director deponed as follows:

"15. That in the circumstances, Hotel Connections Limited ought to be made a party in the suit herein in order to protect its rights and interests in the said parcel of land in view of the claims and prayers made out in the suit and pending Applications by the Respondent."

15. In its own pleadings, the Proposed 2nd Defendant has admitted that it has an interest in the suit property, having purchased the same at a public auction. The said public auction has been challenged by the Plaintiff in its Complaint and in the draft Amended Complaint.

16. Indeed, in the draft Amended Complaint, the Plaintiff is seeking for the nullification of the Title Deed in respect of the suit, which prayer if granted will have a direct bearing on the Proposed 2nd Defendant's ownership of the suit property.

17. It is therefore obvious that from the Proposed 2nd Defendant's own pleadings, and from the evidence placed before this court, the Proposed 2nd Defendant is a necessary party in these proceedings. Indeed, the said Company is already a party in these proceedings having been allowed by the court to join the suit as an Interested Party.

18. Considering that Order 8 Rule 3(1) of the Civil Procedure Rules allows a party at any stage of the proceedings to amend the pleadings with the leave of the court, and in view of the fact that the suit property is currently registered in favour of the Proposed 2nd Defendant, it is my finding that the Application dated 28th February, 2018 is meritorious.

19. For those reasons, I allow the Application dated 28th February, 2018 as follows:

a. Leave be and is hereby granted to the Plaintiff to amend its Complaint and also include the name of Hotel Connections Limited as the 2nd Defendant in this suit in accordance with the annexed draft Amended Complaint.

b. The Amended Complaint to be filed and served on the Defendants within fourteen (14) days.

c. The costs of the Application to be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 7TH DAY OF MAY, 2021.

O. A. ANGOTE

JUDGE