

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL SUIT NO. 1511 OF 2016

EDWIN K. NJAGI T/A

E.K. NJAGI & CO. ADVOCATES.....PLAINTIFF

VERSUS

FIG TREE HOTEL LIMITED.....1ST DEFENDANT

LUCY WAITHIRA MWANGI.....2ND DEFENDANT

JOHN IRUNGU GITHINJI.....3RD DEFENDANT

JULIUS KARIUKI MWANGI.....4TH DEFENDANT

RULING

The 2nd, 3rd and 4th Defendants instructed the Plaintiff who is an Advocate of the High Court of Kenya to act for them in a dispute relating to the running of the 1st Defendant and its shareholding. The Plaintiff filed Nairobi HCC No. 454 of 2008 in line with those instructions. A consent was recorded vide which the dispute was referred to arbitration. After the final arbitral award was made, the 2nd, 3rd and 4th Defendants terminated the Plaintiff's services following which the Plaintiff filed a bill of costs, which was taxed at Kshs. 32,447,332/= on 14/6/2010.

The Plaintiff filed this suit on 2/12/2016 and averred that he had established that the 1st Defendant was at an advanced stage of disposing of the property known as Fig Tree Hotel erected on land reference number (L.R. No.) 209/9510 (Original Number 209/1803/4) Ngara, Nairobi County ("the Suit Property"). He averred that the 2nd, 3rd and 4th Defendants' shares in the 1st Defendant were their only known assets. He claimed that he had a lien to the 2nd, 3rd and 4th Defendants' shares in the Suit Property since the instructions the 2nd, 3rd and 4th Defendants gave to him related to their shareholding in the 1st Defendant. Further, that if the 2nd, 3rd and 4th Defendants' shares of proceeds from the sale of the Suit Property were released to them he would lose whatever entitlement to lien that he may enjoy in the Suit Property.

The Plaintiff seeks a declaration that he is entitled to a lien over the 2nd, 3rd and 4th Defendants' shares in the 1st Defendant and that he is entitled to their shares in L.R. No. 209/9510. Further, he seeks a permanent injunction to restrain the 1st Defendant or its agents from releasing to the 2nd, 3rd and 4th Defendants their share of the sale proceeds from the Suit Property together with costs of the suit and interest.

The suit was heard on 14/6/2021. Plaintiff and the Defendant each called one witness. The court directed parties to file submissions. When the court retired to write its judgement, it noted that the Plaintiff's claim does not relate to ownership of land or title to land.

The Plaintiff's claim is based on a lien over the 2nd, 3rd and 4th Defendants shares in the suit land. The claim for lien does not fall within the jurisdiction of this court. In the interest of justice, this suit will be transferred to the High Court Civil Division for hearing and determination.

Delivered virtually at Nairobi this 9th day of September 2021.

K. BOR

JUDGE

In the presence of: -

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff and the Defendant