



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. E184 OF 2021**

**GOLDEN MILE PARK MANAGEMENT LIMITED.....PLAINTIFF/APPLICANT**

**- VERSUS -**

**DREYAN INVESTMENT LIMITED.....DEFENDANT/RESPONDENT**

**RULING**

1. By a notice of motion dated 26<sup>th</sup> May 2021 the plaintiff/applicant seeks orders:-
  - a. Spent.
  - b. Spent.
  - c. That after hearing of this application interpartes, this honourable court be pleased to grant an injunction restraining the respondent either by itself, their agents, servants and/or personal representative and assignees from undertaking any construction work on all that parcel of land known as Land Reference Number.5990/9 (hereinafter “the suit property”) pending the hearing and determination of the suit;
  - d. That the costs of this application be provided for.
2. The grounds are on the face of the application and are set out in paragraphs 1 to 7.
3. The application is supported by the affidavit of Stephen Tutu Kariithi sworn, on the 26<sup>th</sup> May 2021.
4. In response, the defendant filed a notice of preliminary objection dated 8<sup>th</sup> June 2021.
5. On the 9<sup>th</sup> June 2021, the court directed that the preliminary objection be heard first, in priority to the notice of motion. It also directed that the same be canvassed by way of written submissions.
6. The grounds of the preliminary objection are:-
  - i. That the application and the suit is bad in law as it was filed without due authorization of the plaintiff company.
  - ii. There is no resolution or valid resolution for the plaintiff company approving the institution of this suit.
  - iii. The purported deponent Stephen Tutu Kariithi, to the supporting affidavit in the application and the verifying affidavit in the plaint is not a director of the plaintiff neither is he authorized to act on behalf of the company, and therefore has no powers of the board to act on behalf of the plaintiff company.
  - iv. There is no resolution or no valid resolution of the plaintiff company appointing Kamuti Waweru & Company Advocates to institute this suit for and on behalf of the plaintiff company.
  - v. The filing of this suit by the firm of advocates is in valid for want of authority from the plaintiff company.
  - vi. The plaintiff company did not authorize Stephen Tutu Kariithi to swear the verifying affidavit and neither the supporting

affidavit for the said application.

**vii. That therefore the application by the plaintiff/applicant should be struck out with costs to be borne by the purported advocates on record as the same is incompetent and bad in law.**

7. The defendant has annexed a CR12 which shows that Golden Mile Park Management Limited is a company incorporated under the Companies Act 2015 on 20<sup>th</sup> January 2011. The directors/shareholders of the company are Karmali Shiraz Nazir and Westfield Developers Limited with one (1) share each. The plaintiff on the other hand claim the company is incorporated under the Sectional Properties Act, 2020. It has however not annexed any certificate of incorporation. In the absence of such evidence this court will go by the CR12 provided by the defendant.

8. I have considered the preliminary objection and the submissions filed on behalf of the parties. The issue for determination is whether this preliminary objection is merited.

9. I am guided by the case of **Mukisa Biscuits Manufacturing Ltd vs West End Distributors Ltd [1969] EA 696** where it was stated as per sir Charles Newbold P.

**“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts are to be ascertained or if what is sought is the exercise of judicial discretion”.**

10. From the CR12, it is clear that the plaintiff is a company incorporated under the Companies Act, 2015. It can only sue in its own name with the sanction of its board of directors or by a resolution in a general or special meeting. There is no such authority or resolution attached to the plaint. I find that the preliminary objection herein raises pure points of law.

11. In the case of **Saraf Ltd vs Augusto Ardum [2016] eKLR** the Court of Appeal held that:-

**“A limited liability company is a legal person with capacity to sue and be sued (see Solomon & Solomon [1897] AC 22 (H.L)). Because it has no blood and tissue, a limited liability company acts through its Board of Directors. The directors are invested with management and superintendent of its affairs and may lawfully exercise all its powers subject to the articles of association and to the law. It has always been the law that directors are the persons who have authority to act for the company”.**

12. I am guided by the above authority in finding there is no resolution by the directors of the plaintiff authorizing the institution of this suit. It therefore goes without saying that Stephen Tutu Karithi has not been authorized by the company to act on its behalf. He lacks the *locus standi* to institute this suit. Similarly there is no resolution by the Board of Directors authorizing the firm of M/S Kamuti Waweru & Co. Advocates to act for the Plaintiff.

13. The upshot of the matter is that; I find merit in the Preliminary Objection. The same is upheld. Consequently, the Notice of Motion dated 26<sup>th</sup> May 2021 and the entire suit are struck out with costs to the Defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 21<sup>ST</sup> DAY OF OCTOBER, 2021**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Waweru for the Plaintiff

Mr. Gakenga for the Defendant

Steve - Court Assistant