



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 361 OF 2017

AMANZEE INVESTMENTS (K) LTD

HARJIT SINGH MANGAT

GURMALE K. MANGAT

AMANZEE INVESTMENTS LTD.....PLAINTIFFS/RESPONDENTS

-VERSUS-

MANUCHAR KENYA LTD.....DEFENDANT/APPLICANTS

RULING

This application is dated 14th April 2021 and is brought under Section 1A, 1B, 3 and 3A of the Civil Procedure Act and Order 1 Rule 10, Order 50 Rule 6 of the Civil Procedure Rules seeking the following orders;

1. This application be certified as urgent and be heard exparte in the first instance.
2. Further proceedings in this suit be stayed until the Defendant's costs on the suit withdrawn by the 2nd and 3rd Plaintiffs are assessed and paid.
3. The 4th Plaintiff, Amanzee Investments Limited be compelled to give access to the suit premises to the Defendant and to facilitate the entry into the suit premises by a representative of the Defendant and the Defendant's structural engineer and quantity surveyor for purposes of inspecting the suit premises, taking photographs and videos, measuring dimensions and the preparation of a second structural engineering report and the preparation of the report by the quantity surveyor on the costs of reconstruction and in default of providing access within such time as may be fixed by the court this suit be dismissed with costs.
4. Access to the suit premises for inspection purposes aforesaid be granted on a working day or working days between the hours of 9:00 a.m and 5:00 p.m.
5. The 4th Plaintiff Amanzee Investments Limited be compelled to deliver to the Defendant a copy of its certificate of incorporation in the Republic of Seychelles, a copy of the title document for CR. No. 18602/1 and a copy of all the building plans of the warehouse in that property which is the subject matter of this suit within such time as the court may appoint and in default this suit be dismissed with costs.
6. Time for the Defendant to file and serve the Amended Defence be extended for 30 days after the 4th Plaintiff, Amanzee Investments Limited complies with any order given under prayers (c) and (e) above.
7. The 1st Plaintiffs suit against the Defendant be struck out with costs.
8. The Defendant be granted leave to enjoin Bubbles Logistics (E.A) Limited as a 2nd Defendant or Third Party to this suit and the Defence be amended appropriately
9. The 1st Plaintiff be compelled to file and serve a witness statement in support of the amended Plaintiff within such time as may be directed by court and in default this suit be struck out with costs.

10. Costs of this Application be provided for

The respondents submitted that on 6th June 2017 the Plaintiffs/ Respondents filed the instant suit against the Defendant/ Applicant seeking relief in their favour for inter alia: recovery of rent arrears and a claim for 3 months' rent in lieu of notice for the warehouse on property CR 18602/1 (hereinafter referred to as the suit premises) that the Defendant/ Applicant had leased from the Plaintiffs/Respondents and was in occupation of between the years 2011 and 2016. The same is based on a lease agreement entered into and executed in 2011, the 2nd and 3rd plaintiffs / respondents (Harjitl Singh Mangat and Gurmale K Mangat respectively) on the one hand agreed to let and the defendant/ applicant on the other to take on lease, the warehouse standing on the suit property for a term of five years and one month commencing 1st September 2011 at a rent, terms, conditions, covenants, and agreements contained in the said lease agreement. In the year 2012, the 2nd and 3rd plaintiffs lawfully assigned their rights, benefits and obligations in the suit property to their assignee being 1st Plaintiff/ Respondent (Amanzee Investment Kenya Limited) through a subsequent 2012 lease agreement that thus superseded the 2011 one averred to above. The 1st Plaintiff executed the amended lease agreement to this effect then handed over the same to the defendant for their further execution and registration.(Annexed hereto and marked " JL 1 " and " JL 2" are copies of the 2011 and 2012 lease agreements). That a claim for cost of repairs for damages occasioned on the suit premises as a result of the negligent / tortuous acts of the its defendant/ respondent agents, servants, and/or employees, licenses and/or invitees occasioned during the said period of the defendant's occupation. The said property is registered as a leasehold property in the name of the 4th Plaintiff/ Applicant (Amanzee Investment Limited) Annexed and marked "JL 3" is a copy of the certificate of title No. 18602; A claim for compensation for economic loss and loss of earnings due to defendant's negligent acts/damage to the warehouse, being the property of the 4th Plaintiff. A claim for painting and repair work on the improvements and interior part of the warehouse and; A claim for discharge of the outstanding accounts for conservancy, water, electricity and other utility bills; General damages and the Plaintiffs aver that they have a cause of action against the Defendant/ Applicant and the Defendant/ Applicant is put to strictly prove otherwise.

That the defendant/Applicant's application is frivolous, vexatious and has been brought in bad faith with the sole aim of abusing the court process, defeating the course of justice and further delaying the fair trial of the plaintiffs' case and should thus be dismissed with costs to the Plaintiffs/ Respondents. That the 4th plaintiff is the registered leasehold owner of the suit property no CR 18602 /1 (as evidenced by the certificate of title marked " JL 3') and thus has locus standi in this suit. When the Plaintiffs/ Respondents took possession of the suit property, the Defendant/Applicant was already in possession and paying rent thereto to Mr. Ajit Bhogal, the then registered owner of the said property at the time. In 2011 when Mr Ajit Bhogal transferred his rights and interests in the suit property to the 2nd and 3rd Plaintiffs/Respondents and which were subsequently transferred to the 4th Plaintiff / Respondent, the Defendant/Applicant was fully involved in the hand over/ transition process and the Defendant/ Applicant continued to pay rent without interruption to the 2nd and 3rd Plaintiffs/ Respondents until 2012.

This court has considered the application and the submissions therein. I find that no valid reason has been given for a stay or proceedings. Issue of costs can await the conclusion of this suit and should not be used to delay justice. Prayers for delivery of copies of certificate of incorporation and compelling the respondent to file witness statements are all up to the respondent's discretion and this court will not compel them to do the same. It has come out in submissions that the suit premises have already been leased to another tenant and the court sees no use for the defendant/applicant to gain entry at this time as the status quo has long changed. This court grants prayer 8 of the application that leave is granted to enjoin Bubbles Logistics (E.A) Limited as a Third Party to this suit and the Defence be amended appropriately within the next 14 days. No reasons have been given as to why this suit should be struck out. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 9TH NOVEMBER 2021.

N.A. MATHEKA

JUDGE