



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION
MISC.CIVIL APPLICATION NO. 279 OF 2015

PINNACLE PROJECTS LIMITED.....1ST PLAINTIFF
SPIRE ARCHITECTURAL LIMITED.....2ND PLAINTIFF
GA CONSULTANTS LIMITED.....3RD PLAINTIFF
SHAQUE ASSOCIATES LIMITED.....4TH PLAINTIFF

VERSUS

BEATPER ENTERPRISES LIMITED.....1ST DEFENDANT
BEATRICE NJOKI PETER2ND DEFENDANT
DAVID MACHARIA MURIITHI.....3RD DEFENDANT
NANCY WANJIKU MURIITHI.....4TH DEFENDANT
PETER MACHARIA MURIITHI.....5TH DEFENDANT

RULING

1. Before the court are two applications for determination. The First in time is the Notice of Motion dated 10th June, 2015 by the Plaintiffs seeking the following orders;
 - a. *Spent*
 - b. *Spent*
 - c. *That pending the hearing and determination of this suit, an Order of injunction do issue, restraining the Defendants jointly and severally whether by themselves, their agents, employees or otherwise howsoever, from infringing the Plaintiffs’ copyrights over the architectural, structural, mechanical and electrical drawings herein by printing, publishing, distributing, and/or implementing the said drawings in any manner whatsoever.*
 - d. *That pending the hearing and determination of this suit filed herein, an order of injunction do issue, restraining the 1st Defendant from selling, transferring or dealing in any manner whatsoever with the property comprised in NAIROBI/BLOCK 105/522, NAIROBI/BLOCK*

105/523, NAIROBI/BLOCK 105/524, NAIROBI/BLOCK 105/525, NAIROBI/BLOCK 105/526, NAIROBI/BLOCK 105/5263, NAIROBI/BLOCK 105/5264. (hereinafter “suit properties”)

e. **Spent**

f. **That this Honourable Court be pleased to make such orders as it deems mete and just.**

g. **That the cost of this application be borne by the Defendants.**

2. The grounds of the application were contained in the application and supported by the affidavit of David Kuria, a director of the 1st Plaintiff Company, sworn on 10th June, 2015. It was contended that around 2012, the 5th Defendant approached the deponent and pitched an idea with regard to developing a mall around the Utawala area.
3. However, it was deponed that the time was not ripe for such a project as the proposed area was inaccessible. This however changed after the construction of the eastern bypass when the parties concerned revisited the proposed project. According to the Plaintiffs, the 2nd to 5th Defendants transferred the suit properties to the 1st Defendant.
4. Upon registration of the 1st Defendant as the proprietor of the suit properties, it was contended that the 1st Defendant instructed the 1st Plaintiff to facilitate a change of user of the suit properties from residential to commercial purposes in order to facilitate the implementation of the project.
5. In addition, it was the 1st Plaintiff's claim that the 1st Defendant retained the 1st plaintiff as an independent contractor- cum project manager for the purposed project.
6. That under the terms of engagement, the 1st Plaintiff was to put together a team of consultants and professionals to develop a bankable proposal for the development of the mall on the suit properties. In consideration of these services, it was claimed that the Plaintiffs were to receive 10% of the value quoted by the lowest bidder.
7. In line with the agreement, the 1st Plaintiff was able to develop a bankable proposal in conjunction with various professionals and was even able to secure a mortgage facility from Co-operative Bank of Kshs. 480,000,000/= in favour of the 1st Defendant. The 2nd Plaintiff developed preliminary drawings that were approved by the Defendants with concurrence with all the consultants involved in the project.
8. The architectural drawings were later submitted to the Nairobi County government which issued an approval upon payment of the requisite fees assessed at Kshs. 4,478,400/= by the 1st Defendant. Upon such approval, the 1st plaintiff engaged the services of the 3rd plaintiff to develop a structural design and traffic study for the eastern bypass where the project would be situated, something that was subsequently done.
9. The structural design once again received the approval of the 1st Defendant. A traffic survey was also carried out and a report tendered to the Kenya national Highways Authority (KENHA). A priced bill of quantities was subsequently prepared by the 4th Plaintiff after which the 1st Defendant authorized the 4th Plaintiff to prepare and requisite tender documents. A feasibility study was also carried out at the behest of the 1st Defendant.
10. Afterwards the tender bid was floated and the same attracted 10 contractors after which the Akshar Builders Limited was found to have presented the most responsive bid of Kshs. 531,037,138/= and was thereby awarded the tender. It was also the 1st plaintiff's case that as part of the agreement with the 1st Defendant, it was to actively market the project and engage prospective tenants.
11. That in line with this the Defendant was able to secure several tenants including Nakumatt and Uchumi Supermarkets as tenants. The 1st Defendant was however accused of unlawfully terminating the agreement between itself and the 1st Plaintiff vide a letter dated 13th May, 2015. That as a consequence of the breach, the 1st Defendant was unable to carry out its obligations under the respective contracts between itself and the 2nd to 4th Plaintiff's thereby causing substantial loss and damage to the 1st Defendant.
12. It was further contended that the 1st Defendant Company was brought in as a vehicle through which the 2nd to 5th Defendants could implement the project. That the 2nd to 5th Defendants in their capacities as directors have used the 1st Defendant as a limited liability company to incur

- liabilities running to Kshs. 64,146,184/= as professional fees due and owing to the Plaintiff/Applicants. That besides the suit properties, the 1st Defendant has no other known properties that can secure the decretal amount in case the plaintiffs are successful in their claim.
13. Further the Plaintiffs are apprehensive; the Defendants shall transfer the suit properties to other persons who are not parties to this suit thereby defeating the ends of justice. That further the copyrights in the architectural, structural, mechanical and electrical designs might be infringed causing damage and loss to the Plaintiff. In the foregoing, it was the Plaintiff's assertion that it has clearly demonstrated that it deserves the orders sought.
 14. In reply to the application the Defendant's filed a Notice of Preliminary objection dated 20th July, 2015 and the Replying affidavit of the 3rd Defendant sworn on 20th July, 2015. It was contended that the suit property against the 2nd to 5th Defendants was incompetent and discloses no reasonable cause of action in law against them.
 15. That further, the 2nd to 4th Plaintiff against the Defendants discloses no cause of action against them in law as there were no dealings and or engagement between them and the defendants. That further the Plaintiffs application is defective and incompetent as it seeks reliefs not pleaded or sought in the Plaint dated 5th June, 2015.
 16. The Defendants also contended that the 1st Plaintiff's director, Mr. David Kuria represented to the 1st Defendant that he had all the necessary expertise to assist the 1st Defendant set up the proposed venture. That the 1st Defendant thereafter promised to come up with a bankable proposal for review by the 1st Defendant which included procuring architectural designs and structural drawing for the mall as per the required standard.
 17. That in line with this, the plaintiff undertook to procure and supervise all professionals required to develop the bankable proposal. It was asserted that the terms and conditions of the relationship were to be agreed upon in a formal agreement between the 1st Plaintiff and the 1st Defendant. However, the same did not materialize as there was an impasse on how much the 1st Plaintiff would charge as consultancy fee.
 18. The 1st Defendant accused the 1st Plaintiff of distorting material facts connected to the instant case. In connection to this, it was contended that the 1st defendant did not at any one time instruct the 1st plaintiff to undertake and or facilitate the change of user of the suit properties.
 19. The 1st Defendant also accused the 1st Plaintiff of presenting a sub-standard, non-bankable proposal that had exaggerated and erroneous bill of quantities, unprofessionally prepared, incomplete, fabricated architectural designs and structural drawings. That some of the said drawings were later on discovered to have infringed on the 1st Defendants competitors' propriety rights.
 20. That further, the bill of quantities were extremely exaggerated such that the same were not coherent with the architectural designs and structural drawings. The 1st Plaintiff was also accused of taking advantage of the 1st Defendant's lack of expertise of the construction industry and the inability to discover the errors, mistakes and or misrepresentations.
 21. That the 1st Plaintiff also attempted to coerce the 1st Defendant to enter into a contract with it. According to the 1st Defendant, the 1st Plaintiff did not seek the loan facility from Co-operative bank as indicated. That the same was procured through its efforts but due to the errors and inconsistencies in the proposal, the said Bank withdrew the offer to provide the loan facility for the development of the mall.
 22. The Defendants contended that the 1st Plaintiff also engaged in a collusive tendering process to appoint a Contractor that did not have adequate experience. In line with this, the Defendants denied ever engaging with Akshar Builders Limited as contractors for the proposed mall.
 23. In essence, it was the 1st Defendant's case that the application herein were brought in bad faith and premature as other independent experts, Architects and quantity surveyors have been hired by the defendants to review the proposals made by the Plaintiffs.
 24. That the Plaintiffs rushed to court to enforce claims that never were. The 1st Defendant also reiterated that there was no agreement and or contract between the 1st Plaintiff and itself, and as such no breach or violation of any agreement occurred. In view of the foregoing, it was argued

- that the plaintiff's had not established a prima facie case with probability of success.
25. That in the same vein the Plaintiffs had come to this court with unclean hands as they are culpable for misrepresentation and unlawful practices. Further, it was urged that the claim herein is liquidated and can be compensated by way of damages, therefore an injunction should not issue. That similarly, the architectural drawings or structural are not the subject matter of this suit and there is no threat of the 1st Defendant interfering with the same.
 26. The second application is the Defendants' Notice of Motion dated 9th July, 2015. The same seeks that The Plaintiff and the Notice of Motion herein dated 5th June 5th June, 2015 and 10th June, 2015 be struck out; that in the alternative the 2nd, 3rd, 4th and 5th Defendants be struck out of the suit; that in the alternative, the suit by the 1st to 4th Plaintiff's against the Defendants be struck out. The Defendants also seek to be awarded the costs of the application and the suit.
 27. The Application was not supported by any affidavit. The grounds of the application were that the Plaintiff and the Notice of Motion discloses no reasonable cause of action against the defendant because the same was based on alleged oral agreements between the parties.
 28. That in this regard, there was no written agreement, representation or assurance to pay the alleged debt or claim; as a consequence, it was the Defendants' claim that this contravened section 3 (1) and (2) the law of contract act cap 23 Laws of Kenya. It was also asserted that the 2nd to 5th Defendant have been improperly enjoined in this case, as they were directors of the 1st Defendant with no legal interest in the disputed project and or property.
 29. That further to this the 2nd to 4th Plaintiffs also disclosed no reasonable cause of action as there were no agreements, promise or assurance in respect of the claims of the suit. That any alleged services given with regard to the project were done pursuant to the instructions of the 1st plaintiff.
 30. Consequently, that there was no privity of contract between the 2nd and 4th Plaintiffs and defendants. In regard to the Notice of Motion, it was contended that the same was incompetent and bad in law. That further the court lacked jurisdiction to grant the reliefs sought in the Motion and the claims therein were contrary to consumer protection law and public policy.
 31. In reply to the application, the Plaintiffs filed the Replying Affidavit of David Kuria sworn on 20th July, 2015. The same contained averments similar to the affidavit of support of the Notice of Motion dated 10th June 2015. The court therefore finds no need to restate the same.
 32. In addition, it was pointed out that all parties enjoined in the suit were necessary for the just determination of the matter by the court. That further the suit and application discloses a reasonable cause of action against the Defendant/Applicants and in the interest of justice that the same should be heard on merit.
 33. The applications herein and the Preliminary objection were dispensed off by way of written submissions as directed by the court on 21st June, 2015. The Plaintiffs filed their submissions on 14th September, 2015, while the Defendants filed their submissions on 9th October, 2015. I have considered the application, affidavits, and submissions of the learned counsel to the respective parties including the various cases cited in support of their arguments.
 34. I note that the preliminary objection as well as the Defendants' Notice of Motion dated 5th June, 2015 deal with the same issues. Fundamentally, the two urge the court to strike out the case against the Defendants for not disclosing a reasonable cause of action. Further to this, the defendants urged that the 2nd to 5th Defendant, as well as the 2nd to 4th Plaintiffs have been improperly enjoined in this case.
 35. From my assessment, the Preliminary Objection does not raise a pure point of law as such. I propose therefore to deal with these issues as raised in the Notice of Motion before embarking on whether or not to grant the orders sought in the Plaintiff's Notice of Motion dated 10th June, 2015.
 36. With regard to joinder of parties, Order 1 rule 9 of the Civil Procedure Rules states that no suit shall be defeated for misjoinder or non-joinder of parties and requires that the court deals with the matter in controversy so far as regards the rights and interests of the parties actually before it. On the other hand, Order 1 Rule 10 (2) of the Civil Procedure Rules also provides that:-

“The court may at any stage of the proceedings, either upon or without the application of either part, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendants, be struck out,

and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

37. From the passage above, it is clear that the court may on its own motion or on application of any party to the proceedings order the striking out a party who the court finds was improperly joined. In the exercise of that discretion, the court must as a matter of course, act according to reason and fairness and not according to its whims and caprice.
38. The question therefore, that falls for determination is whether the 2nd, 3rd and 4th Plaintiffs as well as the 2nd, 3rd, 4th and 5th defendants are necessary parties to this suit and if so, whether any cause of action is disclosed against them.
39. The Defendant's application was predicated on Order 2 Rule 15, sub-rule 1(a) which states that at any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that it discloses no reasonable cause of action or defence in law.
40. The power to strike out a party from a suit should be approached with caution. This court has to assess whether or not there is a prima facie case against the 2nd to 5th Defendants.
41. I have examined the pleadings in connection to this case. In the Plaintiff, the Plaintiffs admit that the suit and or the claims against the 2nd to the 5th Defendants arose or relate to acts, transactions and or representations made in their capacity as directors and agents of the 1st Defendant.
42. It is trite law that directors are generally not personally liable on contracts purporting to bind their company. If the directors have authority to make the contract, then only the company is liable on it. To my mind, there is no doubt that this is the position of the law ever since the famous case of **Salomon V. Salomon & Co. (1897) A.C, 22.**
43. Courts have applied the principle of corporate personality strictly. But exceptions to the principle have also been made where it is too flagrantly opposed to justice or convenience. Other instances include when a fraudulent and improper design by scheming directors or shareholders is imputed.
44. In such exceptional cases, the law either goes behind the corporate personality to the individual members or regards a subsidiary and its holding company as one entity. See the case of **Victor Mabachi & Another –vs- Nurtun Bates Limited (2013) eKLR** and **Kwame Kariuki & Another –vs- Nuturn Bates Limited (2013) eKLR.**
45. In the present case, no fraud is claimed. What is alleged is that the 1st Defendant was brought in only as a vehicle through which the 2nd, 3rd, 4th and 5th Defendants could undertake and implement to its completion the project herein. The Plaintiff further alleged that from the court record, there existed agreements between the 1st Plaintiff and the 2nd, 3rd, 4th and 5th Defendant before the incorporation of the 1st Defendant. That justice in this case will not be served if the 2nd to 5th Defendants are struck out.
46. I have looked at the Plaintiff's bundle of documents. All documentation in this case is in connection with the 1st Plaintiff and the 1st Defendant. I find no trace of evidence at this stage to the effect that the 2nd, 3rd, 4th and 5th Defendants acted in their personal capacity in any transaction involving the Plaintiffs. No personal liability on the botched oral agreements can be imputed on the part of the 2nd to 5th Defendants.
47. To my mind, the Plaintiff discloses no cause of action against the 2nd to 5th Defendants in their own personal capacity. Any action taken by the said defendants was only done in their capacities as principals or agents of the 1st Plaintiff Company. In view of the foregoing, I strike out the 2nd, 3rd, 4th and 5th Defendants as parties herein.
48. With regard to the alternative prayer that the 2nd, 3rd and 4th Plaintiff's case against the Defendant's should be struck out, it is my opinion that whether or not there was any contract, written or oral between the said Plaintiffs and the 1st Defendant is a question that cannot be determined at this juncture.
49. I think that to ascertain this at this stage the court would be required to go into the rigorous exercise of trying to determine whether the Plaintiffs have a proper case against the 1st Defendant by assessing the evidence in place.

50. This in my view is premature as evidence can only be tendered at the trial. I am of the view that the merits and demerits of the claims against the 1st Defendant cannot be summarily decided through this application. In so holding, I am guided by the wise words of **Madan. J.A** in the case of **DT Dobie and Company (K) Ltd vs Joseph Mbaria Muchina & Another (1982) KLR 1** wherein he stated-;

“The power to strike out should be exercised only after the court has considered all the facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial judge in disposing the case.”

51. Further, I am of the opinion that the whether or not the 1st Defendant is liable for the purported actions that it is being accused of, namely not upholding its end of the bargain in the oral agreements, should essentially be controverted by way of a Defence. For this reason, I decline the Defendants’ prayer to strike out the suit by the 2nd to 4th Plaintiffs against the Defendant (s).

52. Concerning the prayer that the Complaint and Notice of Motion dated 5th June 2015 and 10th June, 2015 be struck out as it discloses no reasonable cause of action in law against the Defendants, the following is my finding. In **ELIJAH SIKONA & GEORGE PARIKEN NAROK ON BEHALF OF TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE V MARA CONSERVANCY & 5 OTHERS CIVIL CASE NO. 37 OF 2013 [2014] ECLR**, Anyara Emukule J when dealing with an application seeking to strike out a complaint observed that:

“22. There are well established principles which guide the court in the exercise of its discretion under these rules. Striking out is a jurisdiction which must be exercised sparingly and in clear and obvious cases. Unless the matter is plain and obvious, a party to civil litigation is not to be deprived of his right to have his suit determined in a full trial. The court ought to act cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court.

23. A cause of action is “a factual situation the existence of which entitles one person to obtain a remedy against another person-” LETANG VS. COOPER [1965] Q.B. 232. If a pleading raises a triable issue, hence disclosing a cause of action, even if at the end of the day it may not succeed, then the suit ought to go to trial. However, where the suit is without substance or is groundless or fanciful and/or is brought or instituted with some ulterior motive or for some collateral one or to gain some collateral advantage which the law does not recognize as legitimate use of the court process, the court will not allow its process to be used as a forum for such ventures.”

53. In the **Blacks’ Law Dictionary, 9th Edition at page 1644**, a triable issue is deemed to mean “subject or liable to judicial examination and trial” whilst “the trial” has been given to mean “a formal judicial examination of evidence and determination of legal claims in an adversary proceeding.” Thus to my mind triable issues are those that are subject to judicial examination in a Court for determination on their merits or otherwise.

54. Although the Defendants have argued that the Plaintiffs have not established a cause of action against them, since the claim herein is unenforceable in law as per section 3 (1) of the Law of Contract Act, Cap 23 Laws of Kenya. It is my most considered view that this line of argument in

- itself is a triable issue that should be canvassed during the main trial.
55. Prima facie, there seems to be a certain commercial transaction between the parties, that cannot be easily be dismissed. Indeed the Defendants, through their pleadings agreed that certain proposals and counter proposals were made with regard to the project.
56. In my assessment of the pleadings, this is not a plain and obvious case both as regards the facts and the law. In my view, the hearing and determination of the Plaintiffs' case herein is one which is capable of reasoned argument.
57. There are issues which need to be tried, a semblance of which I have set out above and which, in my view, will require viva voce evidence to be brought before Court. In sum, I thus decline the prayer to strike out the Plaint herein. For the same reasons, I also decline to strike out the Plaintiffs' application for interim relief as prayed by the Defendants.
58. Consequently, the Defendants' application dated 9th July, 2015 fails save for prayer number 2. The cost of the application shall be in the cause.
59. I shall now turn to whether the application dated 10th June, 2015 by the Plaintiff for interim relief. I have carefully considered the Applicants' application, the affidavit evidence, the submissions of Counsel and authorities availed to the court. I will commence by saying that the principles upon which this court exercises jurisdiction in applications for temporary injunctions are not in dispute at all and there is no need, except where necessary, to restate the principles.
60. Suffice it to refer to the basic outline of principles upon which the Applicants relies to argue this application. The first principle is that the application must disclose an arguable case which merits judicial consideration or in other words, a prima facie case with a likelihood of success. The second is that the Applicant would otherwise suffer irreparable injury which cannot be atoned for by an award of damages if the application is not granted. Thirdly in case the court is in doubt on the first two principles, the application would be decided on the balance of convenience.
61. The Applicants' case herein is that there are substantial questions to be investigated in the main suit in that there were various agreements between the 1st Plaintiff and the 1st to 5th Defendants. That there was a clear demonstration that the Plaintiffs rights were trampled on when the 1st Defendant unilaterally vide a letter dated 13th May, 2015 terminated the contract between itself and the Plaintiffs.
62. According to the Plaintiffs, liabilities amounting to Kshs. 64,146,184/= were incurred as a result of the Defendants direct breach. Further to this, the Plaintiffs urged that they have demonstrated that they have a prima facie case capable of success. That further there is risk of injustice occasioned by failure to grant an injunction as the 1st Defendant has no other known assets. In the foregoing, the Plaintiff argued that the balance of convenience tilts to its favour.
63. In rebutting the above submissions, the Defendants argued that the Plaintiffs had failed to meet the threshold required for the grant of a temporary injunction. That further the reliefs sought in the plaintiff's application are not anchored in the Plaint.
64. That additionally, the dispute at hand is for liquidated amounts of money and any irreparable loss could be adequately compensated by an award for damages. Further to this, it was argued that the Plaintiffs were culpable to material misrepresentation and non – disclosure. That further the Plaintiffs were contra –statute and tainted with illegally.
65. I have considered the rival arguments of the parties. In my thinking, the application for interim relief in this case is straightforward. I have taken the liberty to peruse the Plaint dated 5th June, 2015 and it is clear that the Plaintiffs' claim herein consists of breach of purported oral contracts between the parties. Whether the same are legitimate or not cannot be tried at this stage of the proceedings since it is the crux of the suit, and the existence and legality of any agreement between the parties is both a question of fact and law.
66. However as correctly argued by the Defendants, a party can only be granted a temporary injunction if it has sought injunctive relief in the Plaint. I rely on the case of on **Kihara v. Barclays Bank (2001) 2 E.A 240** where **Ringera J.** (as he then was) observed:-

“The plaintiff's application for interlocutory relief did not sound under rules 1(a) and 1(b) at all

(though both rules have been invoked) but fell under rule 2. Though this had been mentioned by counsel the plaint had not been amended and the application for an interim injunction was incompetent as the plaintiff did not seek any relief in the form of a permanent injunction in the plaint. In those circumstances and seeing that the plaint has not been amended to incorporate such prayer I am constrained to agree with the submission on behalf of the bank that the application is incompetent and ought to fail on this ground alone.”

67. The point taken from the above case is that the application for interlocutory injunction was incompetent where no relief of a permanent injunction is sought in the plaint. No such prayer is contained in the Plaint. I therefore find this application incompetent and dismiss it with costs.
68. However, in the event that I am wrong on the procedural aspect of this matter, it should be remembered also that an injunction is a discretionary equitable remedy and accordingly the same may be denied even to a party who passes those technical tests if his conduct in relation to the subject matter of the suit is shown not to meet the approval of a court of equity.
69. In this matter I find that the plaintiffs have not demonstrated that they have an interest in the suit properties to warrant the grant of an injunction. The only nexus shown in relation to the suit properties is that the Plaintiffs claim that they formulated proposals at the behest of the defendants to build a mall on the aforesaid properties. In my thinking, this fact alone cannot serve to convince this court to curtail the 1st Defendant's rights of use and enjoyment of its properties as protected under section 40 of the Constitution.
70. Furthermore, it is my finding that the Plaintiffs herein are not at risk of suffering irreparable injury that cannot be compensated by an award for damages. Indeed as pointed out, the claim herein is for breach of contract and an award for damages is sufficient. In any event, the applicants have not satisfied the court that the respondents would not be able to meet such compensation as may be ordered should the applicants succeed in the main suit.
71. In view of the foregoing, I find that the Plaintiff has not been able to satisfy the court for the grant of interim relief with regard to the suit properties. From the foregoing, I find that the Plaintiffs' application dated 10th June, 2015 is unsuccessful except for prayer number 4, since the same was uncontested by the Defendants.
72. I hereby order that pending the hearing and determination of the suit the 1st Defendant, through its agents, employees or otherwise should not use or infringe the Plaintiffs' copyrights over the architectural, structural, mechanical and electrical drawings by printing, publishing, distributing and/or implementing the said drawings in any manner.
73. The costs of this application shall go to the Defendants.
74. It is so ordered.

Dated, Signed and Delivered in Court at Nairobi this 8th day of April, 2016.

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C. KARIUKI

JUDGE