



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 179 OF 2014

MASAI MARA WILDERNESS LODGE LTD.....PLAINTIFF/APPLICANT

=VERSUS=

BELOILCO HOLDINGS LTD.....DEFENDANT/RESPONDENT

R U L I N G

Introduction:

1. What is before me is the Plaintiff's Application dated 30th September 2014 seeking for the following orders:
 - (a) **THAT pending hearing and determination of the dispute herein by both parties by an arbitration process pursuant to Article 18 of the Lease Agreement, this court be pleased to issue an injunction restraining the Defendant, its agents, advocates, auctioneers or any other person acting on its behalf from encroaching, trespassing, destroying, damaging or interfering in any manner whatsoever with the Plaintiff's business known as Mara Engai Indian Ocean Resorts Limited in Kilifi on Plot No. 13053 Kilifi on CR. 14391.**
 - (b) **That this court be pleased to issue temporary order of injunction restraining the Defendant in terms of prayer (a) above**
 - (c) **That costs be in the cause.**
2. The Application is premised on the ground that under Article 18 of the Lease Agreement between the parties, any dispute between them arising from the lease is to be referred to an arbitrator; that the Defendant issued to the Plaintiff a notice to vacate the suit property on 20th March 2014 and that the said notice violates the express provisions of the management contract which expires after five (5) years.
3. Although the Defendant's director was served with the Application, he did not file any response. The application is therefore undefended.
4. The Plaintiff's advocate submitted that courts have wide powers relating to interim orders for the purpose of preserving the status quo pending and during arbitration and that this court should issue the interim measures of protection pursuant to the provisions of section 7 of the Arbitration Act.
5. I have perused the Lease Agreement dated 9th June 2011 between the parties herein and signed in Geneva. The Lease Agreement provides that any dispute between the Lessor and the Lessee

- arising from the Lease shall be referred to the final arbitrator of a single arbiter.
6. I have also seen the Defendant's letter dated 20th March 2014, notifying the Plaintiff of their alleged default to comply with the terms of the lease.
 7. The said notice clearly shows that a dispute between the parties has arisen. However, the Applicant has not stated in its affidavit the attempts it has made to comply with the Lease Agreement or to address the issues raised in the Respondent's letter.
 8. An order of injunction or the maintenance of status quo or the interim measures of protection cannot be given to a party as a matter of course. The Applicant ought to satisfy the court why such an order should be granted by showing that prima facie it is not in breach of the Lease Agreement.
 9. In the impugned notice, the Respondent has claimed that the Applicant has not furnished it with a current Certificate of Insurance (general liability insurance) which is a violation of Article 10 of the Lease.
 10. The Respondent further alleges in the notice that the Applicant demolished "the desk located on the bench along the seashore, which was a violation of Article 9 of the Lease. Again, the Applicant has not responded to this allegation in its affidavit. All it wants is an order of injunction without responding to the allegations raised by the Defendant.
 11. For the above reasons, I am not satisfied that the Plaintiff is entitled to interim measures of protection or injunction notwithstanding the fact that the Application is unopposed.
 12. The Plaintiff's Application dated 30th September 2014 is therefore dismissed with no orders as to costs.

Dated and delivered in Malindi this 6th day of **February**, 2015.

O. A. Angote

Judge