



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION
ELC CIVIL SUIT NO. 935 OF 2012

SATO PROPERTIES LIMITED PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI 1ST DEFENDANT

COMMISSIONER OF LANDS 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

AND

ANTOW TRADING COMPANY LTD1ST INTERESTED PARTY

JENEBY TAITA TOO.....2ND INTERESTED PARTY

RULING

By a Notice of motion application dated 14th December 2012 expressed to be brought under section 3A of the Civil Procedure Act and order 1 Rules 1, 8 and 10 (2) of the civil Procedure Rules M/S Antow Trading company Ltd and and Jenneby Taita Too have applied to be enjoined as interested parties to this suit. Interalia they premise the application on the grounds that:-

- i. The property lawfully belongs to the 1st interested party and that the 2nd interested party is one of the Directors.
- ii. That extra injustice may be occasioned if the matter is heard to the exclusion of the defendants.
- iii. That there have been fraudulent attempts to acquire the property and that for the court to determine the issue of ownership fully, it is mete and just that the honourable court be pleased to enjoin the applicants herein as 1st and 2nd interested parties.

Jenneby Taita too has sworn a supporting affidavit dated 14th December 2012, a replying affidavit sworn on 26th March 2013 and a further responding affidavit dated 28th June 2013 in support of the application. A **Mr. Mahmoud C.A. Tarus** also a director of the 1st interested party has also sworn further responding affidavits dated 22nd March 2013 and 26th March 2013 in support of the application by the interested parties. Mr. **Anil Bharmal Shah** of the plaintiff company has sworn a replying affidavit dated 29th January 2013 in opposition to the interested parties application for enjoinder and further

affidavits dated 17th May 2013 and 28th August 2013 respectively.

A review of the affidavits sworn in support of and in opposition to the application by interested parties to be enjoined in the suit reveal a litany of accusations and counter accusations. The 1st interested party contends the suit property is still owned by it and asserts that any purported allocations and/or transactions to and in favour of other parties were fraudulent. The 1st interested party insists that it has never transferred the suit property to anybody else and asserts the claim by the plaintiff is unfounded. In particular the 1st interested party vehemently denies having transferred the suit property to M/S Malcom properties Ltd who in turn transferred the same to **M/S Baumann engineering Ltd from whom the plaintiff** purchased the property. The 1st interested party claims to have contested the sale transactions in court and that the High court in HCCC NO. 1916 of 1999 vide a ruling delivered by Honourable **Justice Khamoni** as he then was declared that the purported transfer of the property from **Antow Trading Company Ltd to Malcom** Properties was illegal for having been obtained by fraud. As a consequence therefore the 1st interested party contends that all the consequent transactions including the transfer to the plaintiff was of no legal effect and could not pass any interest.

In response the plaintiff contends that the **Antow Trading company Ltd** does not exist as a company the same having been dissolved on 12th September 2007 as per Gazette Notice dated 14th September 2007 and hence cannot sue as it purports to do. The Plaintiff also contends that the court order stated to have been given by **Hon. Justice Khamoni in HCCC NO. 1916 of 1999** is not authentic and that the same may be a forgery. The plaintiff relies on the letter by the Senior Deputy Registrar, High court Civil Division dated 29/4/2013 which raises several issues and concludes by stating that “ **On the foregoing circumstances therefore we state that all the documents appearing on the “skeleton file, do not appear to be genuine.---- We have intensified the search for the original file and investigation into the circumstances in which this skeleton file was opened”.**

The 1st interested party in response to the Plaintiffs assertion that the company was dissolved asserted that the company was in existence and produced a letter dated 30th May 2013 purported to be signed by an assistant Registrar of companies indicating that the company was in existence as at 30th May 2013 and setting out the list of directors and shareholders. A subsequent letter dated 31st July 2013 by **M/S Colleta Maweu** state counsel at the Registrar of Companies annexed to the plaintiff affidavit of 28/8/2013 states that “.....**we cannot vouch the authority of the annexed letter dated 30th May 2013 as the physical file cannot be traced at the moment. We will comment when the file resurfaces”.**

Though there are strong indicators that some of the documents tendered by the applicants particularly as relates to the validity of the order in **HCCC NO. 1916 of 1999** and correspondence from the Registrar of companies may not be genuine, I am not prepared at this interlocutory stage to make definitive findings as to whether or not they are forgeries. The parties are contesting each others documents and I am of the view that in the absence of any conclusive evidence the trial court would be best placed to make any definitive findings after hearing and considering the evidence as a whole.

The position in this matter is that discounting any forgery on the part of the applicant which I cannot rule on at this stage, the interested parties would have an interest in the subject matter of the suit to entitle them to be granted leave to be enjoined in the suit.

However as it is the 1st Applicant who claims the suit property as owner I find no basis upon which the 2nd interested party who is a director of the 1st interested party would be made a party.

In view of the issues that the 1st interested party raises I am satisfied its presence as an interested party in these proceedings would be necessary in terms of order 1 Rule (2) so as to enable the court to effectually and completely adjudicate upon and settle all questions in the suit otherwise a party may file that they were denied the right to ventilate their case. This also being a land matter it is my view that it is necessary to bring on board all the contestants who may have some interest so that all the issues are determined once and for all.

I according grant leave to the 1st applicant/interested party to be enjoined in the suit as an interested party but I disallow the application on the part of the 2nd applicant interested party. I make the following directions:-

- a. The plaintiff to serve the interested party with all the pleadings in this matter within 7 days from the date of this ruling and that the interested party file their response within 14 days from the date of service of the pleadings upon them.
- b. The plaintiff will have leave of 14 days from the date of service upon them of the interested parties response to file their reply where upon any party will be at liberty to apply to the court for further directions.
- c. The costs of the application shall be in the cause.

Ruling dated and delivered at Nairobi this...14TH.....day of ...FEBRUARY.....2014.

J.M. MUTUNGI

JUDGE

In presence of:

.....**PLAINTIFF**

.....**1ST DEFENDANT**

.....**2ND DEFENDANT**

.....**3RD DEFENDANT**