



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CIVIL CASE NO. 211 OF 2008

ALIHITO SERVICES.....PLAINTIFF/APPLICANT

VERSUS

KIHUMWIRI FARMERS LIMITED...DEFENDANT/RESPONDENT

RULING

The application for determination is on the Notice of Motion dated 16th November 2012. This application is brought under Order 1 Rule 3, Order 1 Rule 10 and 14 of the Civil Procedure Rules, Section 3A & 63 (e) and sec 100 of the Civil Procedure Act. The applicant is seeking for orders that :-

1. The plaintiff be granted leave to enjoin Peter Kariuki Macharia of P.O Box 1401 Thika in the suit as the 2nd Defendant.
2. The Honourable court be pleased to grant leave to the plaintiff/applicant to serve process on Peter Kariuki Macharia
3. The Draft amended plaint annexed and marked AWN1 be deemed as duly filed
4. That the costs of this application be in the cause

This application is based on the grounds that the said Peter Kariuki Macharia received and acknowledged payment for and /or on behalf of the 1st Defendant in the sum of Kshs. 1,000,000 on the 16th October 2006 being part payment of the land respecting LR No 9214 Thika portions B1, B2 and B3 the subject of the suit in his own name.

The application is supported by the affidavit Alice Wahito Ndegwa who said that she is the director of the plaintiff company. She said that on 16th October 2006 the plaintiff entered into an agreement with defendant of sale of LR. No. 9214/B1-9214/B2-9214/B3 which purchase price was Kshs 34 Million. That it was an express term of the contract that the seller was to give vacant possession of the property which they have not to date and the property is inhabited by squatter. She further avers that 10% of the purchase price vide cheque number 000264 of Kshs 3,400,000, which was acknowledged by Peter Kariuki Macharia and a further Kshs 1,700,000 making a total of Kshs 5,100,000. She further states that the defendant has failed and or refused to transfer the suit property in its name and yet it continues to withhold the deposit and other subsequent payment made to it by the plaintiff which amounts to fraud. She contends that the money amounting to Kshs 5,100,000 is returnable since the defendant is in breach of the contract therefore she seeks for the prayer that Peter Kariuki Macharia be enjoined as the 2nd Defendant who is the director and chairman of the 1st Defendant.

During the hearing on 25th April 2013, the applicant reiterated the contents of the supporting affidavit and sought prayer 2, 3 and 4 of the Notice of Motion.

This application was served upon the defendant advocate on 5th December 2012 as is evidenced by the affidavit of service of Joseph K Manzi sworn on 27th January 2013 and also a hearing notice served and received by the defendant's advocates. I am satisfied that service has been effected. The applicant has explained the reason for enjoining the party which are reasonable in my view. Justice requires that a court should be availed all the necessary facts and evidence to help it determine a matter even if it means joining the party.

I therefore grant prayers 2,3 and 4 of the application dated 16th November 2012.

Orders Accordingly

R.OUGO

JUDGE

Dated, Signed and Delivered this 3rd May 2013

In the presence of:-

.....Applicant

.....Respondent

.....Court Clerk