



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO. 69 OF 2015

SAMUEL NJERU M'UTHI.....PLAINTIFF

VERSUS

DEPAK KAMANI1ST DEFENDANT

GEORGE ONER OGALO.....2ND DEFENDANT

ZARA PROPERTIES LIMITED.....3RD DEFENDANT

ZAMINA LIMITED.....4TH DEFENDANT

=AND=

YE LAND COMPANY LIMITED.....PROPOSED INTEREESTED PARTY

CONSOLIDATED WITH ELC NO. 92 OF 2015

ZAMINA LIMITED PLAINTIFF

VERSUS

SAMWEL NJERU M'UTHI.....1ST DEFENDANT

PETER KIMULWO.....2ND DEFENDANT

AND

ELC NO. 183 OF 2011

AMCON CONSTRUCTION LTD.....PLAINTIFF

VERSUS

ZARA PROPERTIES LIMITED.....1ST DEFENDANT

CHIEF LANDS REGISTRAR.....2ND DEFENDANT

COMMISSIONER OF LANDS.....3RD DEFENDANT

HON.ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. This is a ruling in respect of notice of motion dated 10th September 2019 brought by a Company called Zara Properties Limited (The Company) which is said to have been registered on 5th June 2010. The company seeks to have Ye Land Company Limited joined in these proceedings as an interested party. The company also seeks temporary injunction to restrain Ye Land Company Limited from interfering with LR No.209/12261 (LR No.123523) or LR No.209/20257 (IR No.70419). The company also seeks a mandatory injunction ordering the removal of Ye Land Company Limited from the aforesaid parcels with the assistance of officer commanding police station Embakasi.
2. The proceedings herein relate to three consolidated suits that is *ELC 183 of 2011 Amcon Construction Company Limited Vs Zara Properties Limited & 3 Others* , *ELC 69 of 2015 Samuel Njeru M'uthi Vs Deepak Kamani & 4 others* and *ELC 92 of 2015 Zamina Limited Vs Samuel Njeru M'uthi & another* . The original court files in respect of all the three files disappeared from the registry. An application for re-construction was made and the same was allowed. What is clear is that not all pleadings have been put in the reconstructed files.
3. All the parties in the three suits did not oppose the company's application except the Plaintiff in ELC 69 of 2015 who is also the 1st Defendant in ELC 92 of 2015 and Ye Land Company Limited which is sought to be brought into the proceedings as an interested party.
4. It is the company's contention that it is legally registered owner of LR No 209/ 12261 (IR No.123523) measuring 1.600 Hectares. The company contends that in or around February 2015, Samuel Njeru M'uthi illegally had the same land registered in his name under title number LR No.209/20257(IR No.70419 and later on transferred the land to Ye Land Company Limited which became the registered owner on 14th August 2015.
5. The company further contends that the transfer of the disputed land to Ye Land Company Limited was contrary to orders of Justice Mutungi which were given on 14th August 2015 directing that the disputed property be preserved by all the parties, not disposing it off or interfering with it in any manner. As a result of the transfer, Ye Land Company Limited is now constructing on the disputed property under protection of the police hence the company's prayer for protection of the disputed property by way of injunction and removal of Ye Land company limited from the disputed property.
6. Ye Land Company Limited opposed the application by the company based on a replying affidavit sworn on 2nd December 2019. The director of the company states that the company purchased the disputed property from its owner after carrying out due diligence and that as the registered owner, the company moved into the disputed property and is building on the same. The proposed interested party contends that the company is a busy body which has refused to disclose its directors and the company having transferred its interest to Zamina Limited has no basis again to litigate in this matter.
7. The proposed interested party urged the court not to sanction the illegal activities of the company by allowing its application. The proposed interested party argued that the High Court and Court of Appeal had found that the company is not the one called Zara Properties Limited and that there are actually more than two companies going by the name Zara Properties Limited.
8. On his part, Samuel Njeru M'uthi opposed the company's application based on a replying affidavit sworn on 16th January 2020. This Respondent contends that the company has no pleadings on which it can make any application. The Respondent contends that Mr Miyare was not representing any of the Zara Properties Limited companies during the hearing in HCCCN0.700 of 2010 where the dispute was over which company was the real Zara Properties Limited. This Respondent denied accusations against him that he was behind the disappearance of the three court files. He contends that as at the time he sold the disputed property, there were no orders barring him from doing so.
9. The Respondent therefore contends that no application can be granted when there is no basis for the same. The Respondent further argues that no injunction can be granted when there are no pleadings to support the same.
10. I have carefully considered the company's application as well as the opposition to the same by the proposed interested party and Samuel Njeru M'uthi . I have also considered the submissions by the parties. The only issues which are for determination are whether the proposed interested party ought to be enjoined in the proceedings and whether the company should be granted injunctive reliefs as prayed for. It is apparent that the company has only brought this application to cause confusion as it is yet to be made a party in these proceedings.
11. There were proceedings in the High Court in respect of the true company going by the name Zara Properties Limited. One of the companies was identified as (C106174) which was formerly known as Prompt Fire Protection Limited and (CPR/2010/24490). This dispute went to the Court of Appeal which found that the company identified as (CPR/2010/24490) was the real Zara Properties Limited.
12. It is important to note that as at the time the dispute over the name was being litigated in the courts, the Zara Properties Limited which had been named as a defendant in ELC 183 of 2011 and ELC 69 of 2015 was not the company which is the Applicant in this application. The company which was named as a defendant is the company identified as (C106174) Zara Properties Limited which was formerly called Prompt Fire Protection Limited. It is therefore clear that the company is yet to join these proceedings and cannot therefore purport to seek orders against Ye Land Company Limited.
13. Mr Miyare was requested by counsel for the Plaintiff in ELC 69 of 2015 and counsel for the proposed interested party to disclose which Zara Properties Limited he was representing but he did not disclose. Mr Miyare at one time tried to mislead the court that he was acting for the 3rd Defendant in ELC 69 of 2015 which is not the case. Mr Miyare even went ahead to file a defence on behalf of the company and raised a counter claim against Ye Land Company Limited, Zamina Limited and Samuel Njeru M'uthi before even Ye Land Company Limited could be made a party to these proceedings. This was unprocedural and I proceed to expunge those pleadings from the record.
14. Zara Properties Limited which is named in these proceedings is being represented by the firm of C M Advocates LLP. This same company was previously represented by the firms of S M Onyango & Associates and that of Professor Tom Ojienda & Associates.

15. I have given the above background to demonstrate that the company's application is an abuse of the court process which does not require any further detailed consideration as the company wanted to ride on the back of the 3rd Defendant in ELC 69 of 2015 to join these proceedings through the back door. I proceed to dismiss the company's application with costs to Ye Land Company Limited and Samuel Njeru M'uthi.

16. It is however important to note that Ye Land Company Limited is currently the registered owner of LR No.209/20257 (IR No.70419) having derived its title by way of transfer from Samuel Njeru M'uthi . Before the original files disappeared, the 1st, 3rd and 4th Defendants in ELC 69 of 2015 had filed an application dated 3rd August 2018 in which they sought to have Ye Land Company Limited enjoined as a Defendant in the consolidated suits. Having gone through the pleadings herein and given the fact that a court may even on its own motion or on application enjoin a party to a suit, I hereby order that Ye Land Company Limited be enjoined as the third Defendant in ELC 92 of 2015.

17. The counsel for the 1st, 3rd and 4th Defendants had requested the court to consider the application dated 3rd August 2018 alongside the one which I have already dismissed. I do not wish to go into the details of this application as there is no evidence to show that the other parties had filed any responses to the same. I only wish to point out that the orders which were allegedly issued on 18th August 2015 are suspect. This is because whereas the extracted order purports to have been made on 30th June 2015 by Justice Mutungi, the order purports to have been given on 14th August 2015. There may have been no such order which explains why the three court files disappeared so that the disappearance could cause confusion for the benefit of certain interested parties.

18. In summary thereof, the Notice of Motion dated 10th September 2019 is dismissed with costs to Ye Land Company Limited and Samuel Njeru M'uthi . Ye Land Company Limited is enjoined as the third defendant in ELC 92 of 2015. The pleadings in that case to be amended to include Ye Land Limited as the third Defendant and all pleadings in the three suits be served upon the added party.

It is so ordered.

Dated, Signed and Delivered at **Nairobi** on this **8th** day of **October 2020**.

E.O.OBAGA

JUDGE

In the Virtual Presence of : -

Mr Were for Plaintiff in ELC 69 of 2015

Mr Lusi for 1st, 3rd and 4th Defendants in ELC 69 of 2015, for 1st Defendant in 183/2011 and Plaintiff in ELC 92 OF 2015

Mr Kamau for 2nd, 3rd & 4th Defendants in ELC 183 of 2011

M/s Ndungu for proposed interested party

M/s Mutuku for Mr Miyare for Applicant

Court Assistant: Hilda

E.O.OBAGA

JUDGE