



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS

Miscellaneous Civil Application 123 of 2012

IN THE MATTER FO ORDER 37 RULE 3 CIVIL PROCEDURE RULES 2010 AND SECTIONS 1A, 1B 3A AND 63 OF THE CIVIL PROCEDURE ACT CHAPTER 21 OF THE LAWS OF KENYA.

AND

IN THE MATTER OF L.R. NO. 209/2251/1

BETWEEN

NARSHI SHAMJI MANDALIA1ST
PLAINTIFF

PRAVINA NARSHI MANDALIA.....2ND
PLAINTIFF

AND

WOODLEY INVESTMENTS LIMITED1ST
DEFENDANT

GREENLEAF MANAGEMENT COMPANY LIMITED.....2ND
DEFENDNT

RULING

1. The 1st plaintiff Narshi Shamji Mandalia and the 2nd plaintiff Pravina Narshi Mandalia have filed an originating summons dated 17/2/12 against the defendants, Woodley Investments Limited 1st defendant and Green leaf Management Company Limited. In the originating summons the plaintiffs applicants are seeking orders that,

i. That in default of appearance by the defendants, the Court be pleased to grant orders for the Registrar in charge of the Land and Environment Division of the High Court or other appropriate officer of the High Court to execute the consent clause in the transfer for he property known as Maisonette

number 1 erected on L.R. No. 209/2251/1. Nairobi on behalf of the defendants.

ii. That the Court be pleased to make such further or other orders as are just and fair in the circumstances of this case.

iii. That costs be in the cause.

The originating summons is supported by the affidavits of Narchi Shamji Mandalia and the grounds on the face of the Originating Summons.

The defendants were served by way of advertisement They did not enter appearance and the Originating Summons proceeded exparte.

2. This is the applicants case in brief. They are the registered lessees of Maisonette No. 1 erected on L.R. No. 209/2251/1 Nairobi which is owned by the 1st defendant as the head lessor managed by the 2nd defendant as the management company. That the plaintiff have offered the said property for sale to Karim Ramzanali Karmali and Narmeen Karim Karmali and have executed a sale agreement (NSNI3). That they require the consent of the defendant to transfer the lease in the subject property. That they have no knowledge of the whereabouts of the respective Directors of the defendant companies save for their last known addresses as per the official seal they conducted out at the Companies registry. That they have no other way of contacting the defendants to obtain the necessary consent. That in view of the high possibility that the defendant may fail to show up after being served with the summons if published, they will have no other way of obtaining the consent except through a person appointed by the Court. That there will be no prejudice if the Court grants the plaintiff/applicants prayers as the property was validly and legally sold to a bonafide purchaser for value. The applicants refer to other cases of similar nature where the Court has grant orders like ones they are seek.

3. I have read the affidavit and the annexures attached. The applicants have shown that they are the lessee of L.R 209/225/1. It is evident further from the sale agreement that they wish to sell the property to the parties mentioned. The applicants have explained their frustration in getting the defendants to sign the consent. The application has been properly brought under order 37 rule 3 which states that “ **a vendor or purchaser of immovable property or their representative respectively may, at any time, take out an originating summons returnable before the Judge sitting in the chambers for the determination of any question which may arise in respect of any requisites or objections on any claim for compensation or any other question arising out or connected with the contract sale. (not being a question affecting the existence or validly of the contract)**” The applicant is desirous to selling the property to another party, a sale agreement with the said parties have been exhibited. The issue is the consent required for the head lessor or the defendants to transfer the property to the purchaser. Having considered all this I find no reason why I should not grant the applicant the orders sought. The application is unopposed. I therefore grant prayers 3 and 4 of the Originating Summons dated the 17/2/12. Costs shall be in the Cause.

Orders accordingly.

Dated and delivered this 13th day of July 2012

**R. OUGO
JUDGE**

In the Presence of:-

..... For the applicants

..... For the defendants

..... Court Clerk