



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 331 of 2009

KENYA BUREAU OF STANDARDS. APPLICANT/PLAINTIFF

VERSUS

LUNGA LUNGA TIMBER MART LIMITED.....RESPONDENT/DEFENDANT

R U L I N G

The Chamber Summons before the court is dated 19th June, 2009. It seeks, as far as the court can understand it, that: -

- a) the defendant, its servants or agents be restrained in its business situated adjacent to the premises of the plaintiff/applicant, from causing any nuisances, noises, pollution and/or vibrations making the plaintiff's premises inhabitable or its official business intolerable.
- b) the plaintiff, assisted by Nairobi City Council, be permitted to abate or remove the said nuisances by removing all the material apparatus or equipment that cause or are the source of the said nuisances including the noises and the dust.
- c) the defendant be ordered to meet the cost of cleaning the premises of the plaintiff and removing the apparatus/equipment etc of the defendant
- d) Costs.

The facts of the case as related in the supporting affidavit are as follows: -

That the plaintiff is a public corporation engaged in the testing of food and all other materials manufactured in Kenya or imported into Kenya so that the products used by Kenya Public are of approved standards. The institutions therefore maintains offices and training premises and laboratories for relevant tests as well lecture rooms. That it has occupied their present permanent premises for about 30 years. That about June 2009, certain nuisances started to emanate from a plot adjacent to it. The nuisances consisted of loud noises and dust. Investigation established the noise to be coming from large timber sewing and cutting equipment installed by the Defendant. The dust came out from timber splitting, sewing, cutting and planing. That the noises made it impossible for the lecturers to teach or the trainees to pick what the teachers taught. That dust spread into the offices, damaging equipment and other teaching or learning materials and equipment both in the lecture rooms and in the laboratories.

It is the plaintiff's case then that the defendant came to the plot they now occupy adjacent to the plaintiff's plot much recently and found the plaintiff's carrying on their business peacefully and without interference. That the defendant's therefore, have no right to interfere with the plaintiff's business and that to the extent they have so far I interfered, they should be restrained. I also understand the plaintiff to

argue that if the defendants cannot carry out their business without causing any nuisance to the plaintiffs then the plaintiff should be given leave to dismantle the defendant's equipment that is the cause or is the source of the nuisance complained of.

In reply the defendant through Mr. Etemesi argued that its business is lawful since it was licenced to operate at their present situation by the Nairobi City Council. The defendant did not deny the alleged fact that it came to their occupied plot most recently. Indeed defendant was not able to state the date when they occupied their present plot nor could it produce the licence from the Nairobi City Council allegedly permitting it to operate at the situation it now occupies. The defendant even argued that the owner of the plot whom it did not identify, has signed a lease to allow it to occupy the plot but such a lease could not be produced before the court.

I have carefully considered this application. I am persuaded that the Plaintiff occupied its present permanent premises many years ago, thirty years to be exact. It constructed premises which consist of offices, lecture rooms and laboratories. Such premises are in use almost every day of the week. I am persuaded that the complaints filed against the defendants are true. That is to say, that the defendant is carrying on timber trade which involves log and timber cutting, planing and sewing. I accept the fact that the defendant is using heavy equipment and machines which not only make deafening noise that is familiar with such business wherever such is carried, but also raise timber dust that is usually blown up by wind, which deposits it near and around the source of it.

It is likely therefore that such dust could have been carried to the adjacent premises belonging to the plaintiff's who have expressed such grievances. The defendant generally orally denied causing the nuisance complained of. However, the version of facts I accept is the one sworn by the plaintiff. I accept that the noises caused by defendant's equipment and timber machines are seriously interfering with the plaintiff's daily business, which business is intended to protect the rest of Kenyan public. I am satisfied also that they occupied their leased plot recently compared to the time of occupation of the plaintiff's premises by the plaintiff. I am also satisfied that the plaintiffs have made a case on the balance of probability that it deserves temporary protection from the nuisance caused by the defendant, until this suit is heard and finally decided.

While the defendant is entitled to lawfully carry on its business, it should do so without in any way interfering with the business of others. To that extent the law protects every citizen. To the same extent the law will prevent those who interfere with other's rights.

I am not sure that the defendants were authorized to carry on the timber trade operations that they presently carry on the plot they presently occupy. No licence was produced from Nairobi City Council. Nor was any lease from the owner of the plot produced to justify occupation, besides carrying on the business the defendant carries on. But even were such licence or authority to occupy the plot produced before this court, nevertheless such production would not override the principle of law to the effect that every citizen has a right to exercise and enjoy his rights, so long as such enjoyment or exercise does not interfere with other peoples rights and enjoyment of similar rights. I will accordingly make the following orders: -

ORDERS

1. The Defendant, its agents and servants are hereby restrained from carrying on its timber business, situated adjacent to the plaintiff's premises next to the premises of Wells Fargo, at Industrial Area, in a manner which will cause excessive noise and/or vibration or unnecessary dust that will enter or permeate into and interfere with plaintiff's day to day business at its premises situated adjacent to defendant's present business until this suit is heard and finally determined.
2. That in default of the defendant preventing the above nuisances within a period of seven days the plaintiff is hereby authorized to disable defendants' equipment and machines that are the cause or source of the mentioned nuisances subject only that the plaintiff shall first obtain the order of this court to that effect with notice to the defendants.

3. Costs are to the plaintiffs, the same to be agreed upon or taxed.

Dated and delivered at Nairobi this 8th day of October, 2009.

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JUDGE