



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**Civil Suit 294 of 2009**

- 1 NARENDRA KARSAN T/A K.B. SANGHANT & SONS..1<sup>ST</sup> PLAINTIFF**
- 2. DAYALAL BHANJI & CO. LTD.....2<sup>ND</sup> PLAINTIFF**
- 3. PELICAN HAULAGE CONTRACTORS LTD. ....3<sup>RD</sup> PLAINTIFF**
- 4. VASANT KARSAN SANGHAN  
T/A SANGHANI ENTERPRISES. ....4<sup>TH</sup> PLAINTIFF**
- 5. HARI NETWORK AGENCIES LTD. ....5<sup>TH</sup> PLAINTIFF**

**VERSUS**

- 1. BENSON RITHO MURIITHI. ....DEFENDANT/RESPONDENT**

### **R U L I N G**

The application before the court is dated 25<sup>th</sup> June, 2009. It seeks that the Defendant either by himself or his servants, agents and/or employees, be restrained from evicting, the plaintiffs, transferring, disposing or otherwise or in any other way, adversely dealing or interfering with the respective plots occupied by each plaintiff on the suit premises known as L. R. No. 7107/2 in Embakasi Area, Nairobi pending the final hearing and determination of this suit.

The applicants/plaintiffs in the affidavit of support sworn by one Jitendra Popat dated 25<sup>th</sup> June, 2009 avers the following facts: -

That the plaintiffs have occupied in various proportions, the suit premises since 1974 and have developed parts of it by building security permanent and electric walls and have constructed workshops, and administrative offices. That they variously carry out certain businesses including transport business and sale of hardware. That the total number of labourers employed in these businesses is over 300 hundred with a total fleet of motor vehicles involved into the businesses and other related occupation totaling about 500. That before the father of the defendant died, he had offered to sell the suit premises to the plaintiffs and had as result been paid a total sum amounting to Kenya shillings 7.4 million as supported by receipts and cheques whose photocopies are annexed herein,

In addition the plaintiffs also deponed that in 2005 when the City Council of Nairobi set to auction the

suit property for lack of payment of land rents and rates by the estate of the deceased, the plaintiffs were requested by the Defendant and the Administrator of the Estate to salvage the estate by clearing the outstanding amount which the plaintiff promptly did. That the Defendant has before the suit was filed, acknowledged the plaintiffs as the going-on purchasers of the suit property as shown by exhibit JVP 5.

The plaintiffs also aver that they have now been served with an eviction notice by the defendant and can easily be evicted any time unless the court intervenes to protect them, at least until the suit is finally determined. Otherwise they claim, they will suffer irreparable damage and losses. That they are likely to lose the land and/or have a total disruption of the various businesses on the premises now being conducted by them. That the present value of development arising from the fact that the plaintiffs have been in the process of purchasing the suit premises, is estimated at Kshs.50 million.

The application is vehemently opposed by the defendant who however, does not really deny most of the facts averred by the plaintiffs. He does not deny the fact that plaintiffs have been operating on the land for many years. Nor does he deny that they carry on the businesses alleged to be carried thereon. What he questions and denies, is the fact concerning the sale of the land and the sale agreement or arrangement of sale of the land alleged. He denies that the agreement is sustainable since he believes that there is no written sale agreement. He admits that the plaintiffs salvaged the land when it was being auctioned by the City Council of Nairobi. He doubts the number of workers sustained by the businesses being carried on by the plaintiffs and also doubts the amount of development on the land they claim to have made.

I have carefully considered the application after also perusing the plaint which clearly is very poorly drawn. I am however satisfied that there are serious interests required to be protected until the suit is heard and finally decided. I am on the face of affidavit evidence persuaded that the plaintiffs have carried on their businesses on the land for along period. I am also persuaded that they have made substantial developments on the premises. In addition I am persuaded that many workers will lose jobs if the businesses are in the meantime interfered with.

Furthermore, there is prima facie evidence that there could be existing an arrangement of the sale of the suit premises to the plaintiffs concerning which substantive sums of funds have been paid to the estate of the defendant's father which is not being expressly denied by the defendant. In addition the defendant concedes that the plaintiffs in the process of the intended sale of the suit property, paid certain sums of money to salvage the suit property which was being auctioned by the City Council of Nairobi.

The court observes, indeed, that the plaint is not professionally drawn but such a technically can be rectified by the plaintiff. In the meantime the court is on the face of things satisfied that the plaintiffs have a substantial interest in the land which require protection until the parties from both sides canvass their cases. The plaintiff's suit is accordingly not frivolous but has triable issues which do persuade this court to maintain the present interests and status quo.

Put differently, the interests on the suit property are substantive and if not maintained and protected may lead to serious loss and damage to the plaintiffs before the suit is heard and finally determined. Some of the said interests cannot be easily compensated by damages.

On the other hand and independently, considering all the issues raised by the plaintiffs herein, the balance of convenience would require that the injunctions sought be granted to maintain the present status quo until the issues in dispute are resolved.

For the above reasons, the plaintiffs' application will and is hereby allowed as prayed with costs to the plaintiffs. Orders accordingly.

Dated and delivered at Nairobi this 5<sup>th</sup> day of November, 2009.

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**D A ONYANCHA**

**JUDGE**