



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1479 OF 1997

AMERICAN LIFE INSURANCE

COMPANY (K) LTD.....PLAINTIFF

VERSUS

DOREEN OTIENO.....1ST DEFENDANT

CITY COUNCIL OF NAIROBI.....2ND DEFENDANT

R U L I N G

The plaintiff is the registered proprietor of a piece of land known as L.R.a 209/8592/2 situated along processional way Nairobi whereon it has erected a commercial building known as Alico House which houses offices used by the plaintiff and its tenants. Access thereto is via the said processional way.

There is another property directly across the plaintiff's property known as L.R. 209/2473. on this latter property, it has been pleaded that, he first defendant erected an illegal and unauthorised semi-permanent structure and began carrying thereon the business of catering and liquor selling establishment under the name and style of 'Nanette Hotel'

It is the plaintiff's case against the first defendant that the said structure and the said business are the source of the noxious and obnoxious nuisance and disturbance to the plaintiff's employees, visitors, clients and its tenants. The particulars of nuisance have been set out in the pleadings.

It is also the plaintiff's case against the second defendant that it has the responsibility to maintain and protect the suit property and all other roads and road reserves within its jurisdiction and to ensure that the same are not misused, abused or otherwise alienated or allotted to private developers e.t.c. The plaintiff says the second defendant has breached its aforesaid duty and responsibility as there ought not be any structure or building on the suit property now should any business or trade be carried on there at by the first defendant or any other party. The particulars of breach are also set out.

As a result of the actions of the first defendant and breach on the part of the second defendant, the plaintiff states that it has suffered loss and damages particulars of which have also been set out.

The plaintiff then instituted this suit and at the same time filed an application by way of Chamber Summons for substantive injunction orders. These are contained in prayers 2,3,4, and 5 of the Chamber Summons. Affidavits in support of the application and in opposition thereto have been filed. I also have the submissions of counsel on record and I must commend each one of them for assisting the court in their arguments.

Most of the arguments canvassed on behalf of the plaintiff are of mandatory nature. The structure having been completed before the application was heard, the plaintiff sought a mandatory injunction compelling the 1st defendant to forth with demolish the said structure and carry off all materials used in construction thereof. There was also an order sought. I am of the view that considering that the only evidence now before me in by was of affidavits and annexures, which evidence has not been subjected to crossexamination, it may lead to a miscarriage of justice to address the substantive prayers sought herein at interlocutory stage.

I have therefore elected not to say any more, not because the application before me is wanting, but because to delve any deeper may prejudice the parties cases when the full trial is conducted.

Accordingly I decline to grant the orders sought and dismiss the application . The costs shall be in the cause. Orders accordingly.

Dated and delivered at Nairobi this 21st January, 1998.

A. MBOGHOLI MSAGHA

JUDGE