

REPUBLIC OF KENYA

Khan v Lualenyi Rancing Co. Ltd

High Court, at Mombasa March 11, 1992

Wambilyangah J

Civil Case No. 647 of 1991

March 11, 1992, **Wambilyangah J** delivered the following Ruling.

This is the plaintiff's application for an injunction to restrain the defendant from leasing its Ranch known as Lualenyi ranch to anybody else for the purpose of operating a tented camp. The application was brought under Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules. From the way the application is framed it must be assumed or said that the applicant's fears are that the property in dispute is in danger of being alienated by the other party before suit's determination. Alienation here would mean the transfer of the plaintiff's interest in the suit property to a different party.

The first question is how is the plaintiff's supporting affidavit sworn on the 3rd September 1991 it was averred in paragraph 3 that:

"3. By an agreement dated 9th of March 1988 the defendant's company agreed to lease the full camping right on 106,000 acres of Lualenyi Ranch for twenty years to me for Shs.2,500/= per month. A copy of the said agreement is annexed here and marked "A".

In paragraph 4 of that affidavit the plaintiff deposed that pursuant to the said agreement he paid the rents for the months of March, April, May and June 1988. He has exhibited on his affidavit the receipts issued to him for the monies so paid.

In a subsequent paragraph of the same affidavit the plaintiff says that the defendant later on refused to accept rent for the subsequent period. In paragraph 6 he deposed that the defendant even refused to allow him to operate the intended camping business on the ranch and that as a result of that refusal he suffered "untold loss and damage".

In clause 4 of the agreement (annexed to the supporting affidavit as exhibit A) it was stated:-

"This agreement is for 20 years with effect from 1st of March 1988 till 1st of March 2008".

From that brief account of the matter as can be gleaned from both the plaintiff's affidavit and his plaint it is clear that the alleged breach of the agreement giving the plaintiff the cause of action in this case was committed as long ago as 1st March 1988 when he (the plaintiff) was prevented from using the lease premises in accordance with the agreement. Yet, the plaintiff did not commence these court proceedings until three and half years later i.e. on 3rd September 1991. In the intervening period the management of the defendant changed. An injunction and indeed specific performance are equitable remedies which only become available to a litigant who is not guilty of inordinate delay in pursuing his rights.

"A court of equity refuses its aid to stale demands where the plaintiff has slept upon his right and acquiesced for a great length of time". (see Halsburys Laws of England 3rd Edn. At p. 641).

In this case I am satisfied that there has been such an inordinate delay in seeking for the remedy of an injunction.

Moreover, the ranch is said to be currently occupied by a 3rd party – one Mr. Mansur Khan, who is allegedly doing so on the basis of a valid existing agreement between him and the defendant. (see the

replying affidavit of the defendant).

In those circumstances the defendants will find it impossible to obey the order of injunction issued against them herein without having to commit a breach of their legal obligation towards their current tenant. Such a situation could have been avoided if the plaintiff had acted with some expedition.

For these reasons I decline to grant the order, sought and I dismiss the application with costs.