



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC. NO. 375 OF 2017

ALI DHIDHA MOHAMED.....1ST PLAINTIFF

CHIWAYA KAMANZA.....2ND PLAINTIFF

VERSUS

MOHAMED OMAR KHAMIS1ST DEFENDANT

KILIMANJARO AUCTIONEERS.....2ND DEFENDANT

RULING

1. On 9th May, 2018, this Court allowed the Plaintiff's Application for interlocutory injunction on terms. the material part of the ruling stated as follows:

“However, in order to maintain the status quo pending the determination of the main issues at the trial of the case, I am inclined to grant the injunction on terms that the defendants pay any outstanding rent arrears and continue to pay ground rent when due until hearing and determination of the main suit. ”

2. The Plaintiffs by the notice of motion dated 18th May 2018 are seeking to review the order of the court made on 9th May 2018 and instead ask the court to order that the 1st Plaintiff await the determination of the suit on the issue of ownership before being compelled to pay the ground rent to the 1st defendant.

3. The grounds in support of the motion are on the face of the motion. The plaintiffs state that there was a mistake or error apparent on the face of the ruling since the 1st plaintiff has been referred to as having paid the ground rent on the said property whilst the annexures show that the municipal rates were being paid to the Municipal Government (sic) and not the 1st defendant. That the order read the “the defendant pay any outstanding land arrears and continue to pay ground rent” when it (should) have read the 2nd plaintiff continue paying the ground rent excluding the 1st plaintiff. The application is supported by the affidavit of Ali Dhida Mohamed sworn on 18th May, 2018.

4. The application is opposed by the respondents through a replying affidavit sworn by Mohamed Omar Khamis, the 1st respondent sworn on 11th July 2018. It is deponed that the application is vexatious, frivolous, an abuse of the court process and bereft of merits. The respondents argue that the applicants are imploring the court through the application to sit on appeal against its own ruling which is contrary to the law. The respondents aver that the only error which requires correction is a grammatical one which stated “defendants” instead of “plaintiffs” to pay rent.

5. Both parties filed submissions which were also highlighted by their respective counsel.

6. I have considered the application the affidavits on record and the submissions made. The issue for determination by the court is whether the applicants established sufficient basis for this court to review its ruling on the grounds that there was an error apparent on the face of the record.

7. This court's evaluation of the complaints raised by the plaintiffs reveal only one typographical error; that the court referred to the defendants instead of the plaintiffs.

8. In my view, the other grounds and arguments put forward by the plaintiffs are good grounds for appeal and not for review. It was apparent to this court that the plaintiffs were seeking to re-argue their application for injunction under the guise that they were presenting an application for review. By asking the court to order that the 1st plaintiff to await the determination of the suit on the issue of ownership before being compelled to pay the ground to the 1st defendant is a ground for appeal and not for review.

9. I will only invoke Section 99 of the Civil Procedure Act and order amendment of the last sentence of paragraph 8 page 7 of the ruling of 9th May 2018 by deleting the word “defendants” and substitute thereof the word “plaintiffs” as it was a clerical error.

10. Besides the clerical error that I have ordered amended, there is no issue in the present application that has persuaded this court that it made other error that is glaringly apparent on the face of the record that can thus be reviewed. The plaintiffs have failed to convince this court that there is an error apparent on the face of the record.

11. In the premises therefore the plaintiff’s application lacks merit. It is hereby dismissed with costs to the defendants.

DATED, SIGNED and DELIVERED at MOMBASA this 1th day of January, 2019.

C. YANO

JUDGE

In the presence of:

Hassan for Defendants

Ojwang holding brief for Tindi for plaintiffs

Yumna Court Assistant.

C.K. YANO

JUDGE

15/1/19