



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT MILIMANI LAW COURTS**

**ELC CASE NO. 85 OF 2018**

**RUGI EIGHTEEN EIGHTEEN LIMITED & ANOTHER.....PLAINTIFF**

**=VERSUS=**

**JOHN GITUKU RUGA & 10 OTHERS.....DEFENDANTS**

**RULING**

1. This is a ruling respect of two separate applications. The first application is dated 1<sup>st</sup> March 2018. It is brought by the plaintiffs/applicants. It seeks the following orders:-

**1. Spent**

**2. That leave be granted to the plaintiff/applicant to file this suit in the Environment and Land Court Nairobi.**

**3. Spent**

**4. That pending the hearing of this suit, this Honourable Court be pleased to issue a temporary injunction order restraining the defendants/respondents herein together with their agents, servants, officers or workmen from any further interference and o any dealings with all that pieces of land known as Land Number 36/111/111 in Eastleigh, Lower Muhito Kariara/1039, lower Muhito Kariara/1040, Lower Muhito Kariara /1040, Lower Muhito Kariara/207, plot number 96 Kiahungu, plot Number 97 Kiahungu, plot number 90 Kiahungu, plot Number 94 Kiahungu and plot number 72 Kiahungu by way of entering, evicting, seizing, possessing, taking over the businesses, tilling or otherwise whatsoever interfering with the plaintiff's/applicant's right on those parcels.**

2. The second application is dated 21<sup>st</sup> May 2018. It is brought by George Kariuki Gituku and Ruga Gituku who seek to be enjoined as interested parties in these proceedings. The applicants seek the following orders:-

**1. Spent**

**2. That this Honourable Court be pleased to order that the intended interested parties/applicants be enjoined in this suit as Interested parties or in the alternative as necessary parties.**

**3. That upon granting prayers 1 and 2 above a temporary order of injunction be and is hereby issued restraining the 2<sup>nd</sup> plaintiff by herself, servants agents and or employees from collecting rental income from properties on Land Reference Number 36/111/111 in Eastleigh, Lower Muhito Number 96 Kiahungu, Plot Number 97 Kiahungu, Plot Number 90 Kiahungu and Plot number 94 Kiahungu owned by th 1<sup>st</sup> plaintiff pending the hearing and determination of this suit.**

**4. That upon granting prayers 1 and 2 above the intended interested parties/applicants be jointly appointed receiver and manager of properties owned by the 1<sup>st</sup> plaintiff with power to take immediate possession and collect rent upon such conditions as the court may deem fit until this suit is heard and determined.**

**5. That the costs of this application be provided for.**

3. The first plaintiff/ applicant is a limited liability company incorporated in 2007 and owns most properties which are the subject of this suit. The second plaintiff/applicant claims that she is the sole director of the first defendant company, her other co-director Ruga Gituku who was her husband having died on 3<sup>rd</sup> September 2017 (deceased). The second plaintiff/applicant in the first application is the second wife of the deceased. The respondents in the first application are all children of the deceased from the deceased's first wife who is also deceased.

4. The applicants in the second application claim to be shareholders in the first plaintiff company. Their relationship to the 2<sup>nd</sup> plaintiff or the

defendants cannot be discerned from the pleadings.

**The first application.**

5. The second plaintiff/applicant contends that following the demise of the deceased, the defendants/respondents moved into the suit properties and have prevented her from running the same. These are properties which had tenants and were generating rental income but the respondents have interfered with the tenants who have filed suits in the Business Premises Rent Tribunal as a result of the interference.

6. The second plaintiff/applicant contends that she and the deceased put a lot of resources in the properties but due to the interference by the respondents, the running of the company has become impossible. She argues that the first plaintiff/applicant is a separate legal entity which has procedures to be followed where a director dies. She therefore contends that her exclusion from running the company is detrimental and ought to be stopped through injunction.

7. The applicants' application has been opposed by the respondents through a replying affidavit sworn on 24<sup>th</sup> April 2018 by the intended interested parties and a further replying affidavit by the 3<sup>rd</sup> respondent sworn on 24<sup>th</sup> April 2018. The intended interested parties contend that they are shareholders of the first defendant company and that the allegation by the second defendant that she is a director of the company are not true. The two contend that they are not aware of any transfer of shares from the deceased to the second defendant and that the documents exhibited by the second defendant are forgeries. They further argue that they are aware that criminal complaints against the second defendant have been made against the second plaintiff by the 3<sup>rd</sup> defendant and that the same are pending investigations.

8. The 3<sup>rd</sup> respondent contends that prior to the demise of the deceased; he had an account at Equity Bank where rental income from the properties owned by the company used to be deposited. The deposited rent will then be used to repay a loan of Kshs.77000,000/= which the deceased had taken. After the demise of the deceased, the second plaintiff/applicant diverted the rental income to a different account which prompted Equity Bank to write a letter stating that it was entitled to rental income under the deed of rental assignment.

9. The 3<sup>rd</sup> respondent goes on to state that as a result of the actions of the second plaintiff/applicant she and the 9<sup>th</sup> respondent took out letters of administration and *colligenda bona* to preserve the deceased's estate. The grant was later amended to include the second plaintiff/applicant and the name of the 9<sup>th</sup> respondent was removed. The 3<sup>rd</sup> respondent argues that despite the grant, the second plaintiff/applicant continues to receive rent due to the first plaintiff/applicant to the detriment of the other shareholders of the company and other beneficiaries.

10. The 3<sup>rd</sup> respondent contends that some tenants filed suits in the Business Premises Rent Tribunal where the Tribunal directed that rent be paid into the account of the deceased and not the second plaintiff; that the second plaintiff is running the affairs of the deceased to the exclusion of her as a co-administrator.

11. In a supplementary affidavit sworn on 6<sup>th</sup> July 2018 by the second plaintiff/applicant; she contends that George Kariuki Gituku and Ruga Gituku resigned as shareholders of the first plaintiff company and there is no way they would have come back as shareholders. On the allegation that she is not a director of the company and that she forged CR12, she states that these are allegations which have not been proved.

12. I have considered the applicants application as well as the opposition thereof by the respondents and the interested parties. I have also considered the submissions by the parties herein. The issues which emerge for determination are firstly whether this court has jurisdiction to entertain this matter. Secondly whether an injunction can be granted in the manner prayed for.

13. On the issue of jurisdiction, the Environment and Land Court has jurisdiction to hear any matter from any part of the country. There are however administrative directions which state that any matter should be filed in the nearest court where the suit property is situated. In the instant case, I notice that most properties are outside the location of Milimani ELC Court. There is only one property which is at Eastleigh. Though I have jurisdiction to handle matters from all over Kenya, it will not be prudent to hear disputes where majority of the parcels in issue are based outside Nairobi. The jurisdiction which is in issue here is Geographical issue and not jurisdiction in the sense of the famous case of *The owners of Motor Vessel "Lillian S"*.

14. On whether an injunction ought to be issued, I notice that this is a dispute which mainly involves the properties where the deceased had interest. Already the process of succession has started. I notice from the supplementary affidavit of the second plaintiff at page 3 paragraphs (t) that there were orders given in the succession cause that a joint account be opened in the name of the 3<sup>rd</sup> respondent and the plaintiff/applicant where rental income is to be deposited. It will therefore be inappropriate to grant injunctive orders whose effect will contradict the orders of the family division Court which is best suited to determine the issue of distribution and preservation of the properties of a deceased person.

15. Whether the second plaintiff/applicant is a director of the first plaintiff company or not or whether the intended parties resigned from the company or not is a matter peripheral to the main issue herein. The parties herein seem to be fighting over control of the company and its properties. As I have said hereinbefore, there are succession proceedings going on. Certain orders have been made which will ensure that the rental income is not misappropriated by one of the disputing parties. I therefore find that no injunction should be granted in the circumstances. I dismiss the plaintiff/applicants application with costs to the respondents.

**The second application.**

16. The two interested parties have annexed documents to show that they are shareholders of the first plaintiff/applicant. Whether the documents are genuine or not is a matter of evidence. The only consideration in allowing one as a party to a suit is whether he/she has demonstrated that he/she has sufficient interest in the subject matter of the proceedings. In the instant case, most properties belong to the

company. If the intended interested parties have a stake in the company, it is important that they be added as interested parties so that their input on the issue of shareholding can be determined by court once there is evidence from the companies Registry on whether they resigned or not or on whether the second respondent is a director of the company or not.

17. The second plaintiff/respondent cannot seek to have the two barred from being enjoined. At this stage, we do not have evidence on whether the two resigned as claimed by the respondent. The applicants in this application are seeking to restrain the second plaintiff/respondent from interfering with the suit properties. This prayer cannot be granted. This is because it has no basis upon which it can be granted. There is no counter claim by the intended interested parties. The prayer for the two to be appointed managers of the company is also misconceived. I only allow the prayer for inclusion of the two as interested parties. The plaint shall be amended within 14 days to include them as interested parties. This file is hereby transferred to Nyeri Environment and Land Court for hearing and disposal.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 21<sup>st</sup> day of February 2019.**

**E.O.OBAGA**

**JUDGE**

In the presence of;-

Mr Wanyonyi for Mrs Rotich for Plaintiff

Mr Gikera for Mr Mwicigi for interested parties

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**