



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 505 OF 2012

[Eldoret Hccc No. 52 of 2009]

FALCON PROPERTIES LIMITED.....PLAINTIFF

VERSUS

DAVID SONGOK LANGAT.....DEFENDANT

RULING

Falcon Properties Limited, hereinafter referred to as the applicant seeks orders that the Notice of Change of Advocates by Omondi and Company Advocates dated 20.5.2009 and filed on 21.5.2009 be struck out. That the consent dated 14.5.2009 signed by Omondi Company Advocates and Annasi Momanyi & Company Advocates and filed on 21.5.2009 and the resultant court order issued on 21.5.2009 be nullified and/or set aside. The court order issued on 21.5.2009 be vacated and that the interim injunction to remain in force.

The application is based on grounds that the applicant's counsel required time to obtain supporting documents from the applicant which documents were with their other lawyers Sobhag V. Shah and V. Goswami in Nairobi.

That the applicant requires leave of this Honourable court to file, serve and be heard on its application to set aside the orders of 21.5.2009 in light of the court's order of 22.5.2009 limiting time within which to file and serve the aforesaid application.

That this court is empowered under Section 3A of the Civil Procedure Act and Order XLIX, Rule 5 of the Civil Procedure Rules as they then were, to grant the orders sought. That M/s Omondi and Company Advocates have had no instructions from the plaintiff/applicant herein to represent it.

The M/s Omondi & Company Advocates are strangers to the plaintiff/applicant hence the purported notice and subsequent consent order are invalid. That the plaintiff/applicant is desirous of having this matter canvassed on its merit.

That this application is made in good faith and in the interest of preserving the interests of the parties herein and the dignity of this Honourable court.

That the orders of injunction made on 15.4.2009 and subsequently extended reverts pending determination of the suit herein.

In the supporting affidavit, it is stated by Jaswant Singh Rai that he is horrified to learn from his Advocate, Mr. A. K. Nyairo, which information he believes to be true that steps have been taken by some individuals to unlawfully hijack and withdraw the plaintiff's herein.

That the individuals who have taken steps are acting contrary to the interests of the plaintiff/applicant and in collusion with the defendant/respondent. That on the authority of the plaintiff's Board of Directors, he gave instructions to M/s Nyairo & Company Advocates to file suit herein. That the plaintiff was incorporated on 9th February, 1988 under Certificate of Incorporation No. C36564.

That the plaintiff filed with the Registrar of Companies its annual return dated 31.7.2007 for the year 2007 on 22.8.2007. That it is evident from the Annual Return of 2007 that the Directors of the plaintiff are:

(i) *Himself*

(ii) *Iqbal Singh Rai*

(iii) Sarbjit Singh Rai

That the plaintiff has never instructed the firm of Omondi & Company Advocates to take over this matter. Indeed, he does not know the said firm of Omondi & Company Advocates nor its proprietor(s).

That he is informed by his advocate, Mr. A. K. Nyairo, which information he believes to be true that after suit was filed herein he (Mr. A. K. Nyairo) received a letter from Omondi and Company Advocates dated 24th April, 2009 purporting to act for a company with a similar name to the plaintiff and stating inter alia that that company;

(i) Was registered on 29.5.2008.

(ii) Its directors were Samwel Kipkemboi Maina and Titus Kiprotich Maina.

(iii) Has no claim over the suit property, that is, Eldoret Municipality/Block 8/338.

(iv) Has never instructed M/s Nyairo & Company Advocates to act in the above suit or at all.

That he is further informed by Mr. A. K. Nyairo which information he verily believes to be true a flurry of correspondences ensued between his firm and the said Omondi and Company Advocates, the basic thrust of which was to notify Omondi & Company Advocates of the particulars of the plaintiff company and the fact that it was the first to be registered under the name **"Falcon Properties Limited"** and was therefore, different from his client company.

That sometime in or about July, 2008, it came to the plaintiff's attention that the Registrar of Companies had registered three (3) other companies in names similar to the plaintiff's.

That the plaintiff instructed V. Goswami of Sobhag V. Shar and V. Goswami Advocates to take up the matter of multiple allocation of the name **"Falcon Properties Limited"** with the Registrar of Companies.

That he was informed by Mr. V. Goswami Advocate which information he believes to be true that he wrote to the Registrar of Companies vide his letter dated 17.7.2008.

That the Registrar of Companies wrote letters to the companies to whom allocation of the name **"Falcon Properties Limited"** was made after the plaintiff's registration, including the clients of Omondi & Company Advocates, advising each of the companies that the allocation of their names was inadvertent as the plaintiff company had been registered long before theirs. The Registrar of Companies further informed the said companies that their continued use of the name **"Falcon Properties Limited"** was untenable within the meaning of Section 20 of the Companies Act (Cap 486) and called upon them to change their names otherwise their registration would be cancelled.

That out of abundant caution and in order to ensure that the public was well informed about and forewarned on the multiple allocation of the name **"Falcon Properties Limited"** the plaintiff advertised a **"Caveat Emptor"** notice in the **"Daily Nation"** of 13.8.2008.

That it therefore came as a total shock when he learnt that the firm of Omondi & Company Advocates had purported to take over this matter from Nyairo and Company Advocates and compromised the interests of the plaintiff/applicant by entering a consent judgment with the defendant/respondent adverse to the plaintiff/applicant.

That at no time did the plaintiff approach the firm of Omondi & Company Advocates to instruct him to either take over the instant suit or compromise it with the defendant/respondent.

That the hijacking of this case was fraudulent, an abuse of the court process and gross interference with the administration of justice.

That it was obvious to Omondi and Company Advocates and his clients that the suit premises herein was allocated to the plaintiff long before the client of Omondi & Company Advocates was registered and therefore, their interference with this case was not only mischievous but has caused a miscarriage of justice.

David Songok Langat in reply states that the suit herein was legally and properly finalized by the consent of the parties. That no acceptable reason has been advanced to warrant the review and setting aside of the consent judgment. That Nyairo & Company Advocates are longer on record and the instant application brought by an advocate who is no longer on record is unsustainable and incompetent.

That whatever issues the plaintiff has with the Registrar of Companies ought to be dealt with elsewhere.

That the firm of Omondi & Company Advocates was properly on record when the consent judgment was entered into and it is still properly on record to-date. That the advocates then on record for the plaintiff were allowed to negotiate and compromise the suit.

I have considered the application, supporting affidavit and replying affidavit and do find that the plaintiff through Mr. Jaswant Singh has sworn that the firm of Omondi & Company did not have instruction to enter consent in this matter and was never instructed.

I do find very serious irregularities in this matter bordering on fraud. The plaintiff was double registered with different directors but own the

same property thus; Eldoret Municipality 8/338. The plaintiff filed a suit claiming the property and alleging that it never sold the property to the defendant. The first company was registered in 1988 whilst the second company was registered in the year 2008. The second company is purported to have transferred the property to the defendant however, the said second company was incorporated after the property had been allocated to Falcon company Ltd. It is not possible that the property was allocated to the second company before incorporation.

I do find that the Omondi & Company Advocates had no instructions from the director of the plaintiff namely Jaswant Singh Rai who swore the verifying affidavit on the 14th April 2009, to come on record and had no instruction to enter into consent dated 14.5.2009 between Omondi & Company Advocate and Annasi Momanyi & Company filed on 21.5.2009. The firm of Omondi & Company Advocate was instructed by a director who did not initiate the suit and therefore had no capacity to act in the matter in any manner whatsoever. The resultant court order issued on 21.5.2009 is based on a null, void and illegal consent as Mr. Songok had no capacity to instruct in a matter filed by company where he was not the director and therefore, the same is hereby set aside. Costs of the application to be paid by the respondent. Orders accordingly.

Dated and delivered at Eldoret this 29th day of May, 2019.

A. OMBWAYO

JUDGE