



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 273 of 2019

GLOBE DEVELOPERS LIMITED.....PLAINTIFF

=VERSUS=

MARK PROPERTIES LIMITED.....DEFENDANT

RULING

1. At the hearing of the Plaintiff/ Applicant's chamber summons dated 23rd August 2019, a preliminary objection was taken by the Defendant/ Respondent on the ground that this court has no jurisdiction to entertain the case. The Plaintiff had filed a suit against the Defendant in which it sought interim measure of protection restraining the Defendant or its servants or agents from impeding the Plaintiff's quiet possession or impeding construction in the Plaintiff's premises on LR No.209/4904 Riverside, Gardens. The Plaintiff contemporaneously filed an application seeking interim protection and for a reference of the matter to arbitration.

2. The Plaintiff as the registered owner of LR No.209/4904 had contracted the Defendant to construct a 19 storey apartment blocks and parking which were expected to be completed by 17th May 2019 . In breach of the contract, the Defendant failed to proceed regularly and diligently leading to issuance of a default clause pursuant to clause 38.2 of the contract. The Defendant failed to remedy the defects and proceeded to close down the site with no works going on. The closure persisted for three weeks prompting the plaintiff to issue a termination notice on 7th June 2019 which directed the Defendant to hand over the site to the Plaintiff's agents.

3. It was later mutually agreed that Defendant was to vacate the site after a joint measurement exercise. The exercise was completed and a re-measurement to ascertain the works done was also carried out. The Defendant has however disputed the outcome of the re-measurements and has ensured that construction by a different contractor does not go on.

4. The plaintiff now contends that what is in dispute is a purely commercial contract and that it has nothing to do with use, occupation or title to land.

5. The preliminary objection was opposed by Mr Cohen for the Plaintiff on the ground that the Plaintiff is seeking protection from interference with its quiet enjoyment of LR No.209/4904 and that therefore this court has jurisdiction. Mr Cohen argues that what is before this court is not on the contract but the interest in the land which the Plaintiff has.

6. I have considered the arguments by the Defendant as well as the arguments by the Plaintiff. I have set out the background of this matter from what the Plaintiff has set out. The Plaintiff is seeking to refer this matter to arbitration. This court has not been asked to decide on whether the termination of contract was proper or whether the amounts being offered to the Defendant are adequate. The Plaintiff is seeking protection in the interim as the matter is referred to arbitration. What the court is being asked to do squarely falls under the jurisdiction of this court. The Plaintiff is seeking protection from interference with its premises on which it is putting up apartments. I therefore find that this court has jurisdiction to grant the relief sought. The upshot of this is that I find no merit in the preliminary objection by the Defendant which is hereby dismissed with costs to the Plaintiff.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 24th day of September 2019.

E.O.OBAGA

JUDGE

In the presence of ;-

Mr Wandabwa and Mr Cohen for Plaintiff and

Mr Nyaanga, Mr Githinji and Mr Sanjay for Defendant

Court Clerk : Hilda

E.O.OBAGA

JUDGE