



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC SUIT NO. 1252 OF 2013

PHILIP JALANG'O.....PLAINTIFF

VERSUS

RYAN PROPERTIES LIMITED.....DEFENDANT

RULING

The Plaintiff made a request for discovery dated 23rd March 2015 under Order 11 Rule 3(2) (d) of the Civil Procedure Rules seeking the following documents:

- a) All minutes of the site meetings relating to the development of Grash Gardens on land reference number (L.R. No.) 12767/3 Nairobi, along Bogani East Road, Karen;
- b) The approved building plans for house no. 7 Grash Gardens on L.R. No. L.R. No. 12767/3 Nairobi, along Bogani East Road, Karen; and
- c) The Defendant's application for a loan for the financing of the project Grash Gardens on L.R. 12767/3 Nairobi, along Bogani East Road, Karen.

The Defendant opposed the request through the grounds dated 14/4/2014 urging that all the minutes of the site meetings in respect of the development or the Defendant's loan application were not relevant since the Plaintiff's claim was for special damages which have been quantified. The Defendant contended that the documents sought by the Plaintiff were irrelevant and unnecessary in the determination of the dispute.

The application was argued before Lady Justice Nyamweya when Mr. Ochieng Oduol, appearing for the Plaintiff submitted orally on 5/5/2015 that the minutes requested would show the timelines and the comments on the structural defects which were in issue and that the approved building plans were relevant since the Plaintiff contended that they were valid. On the loan application, Mr. Ochieng submitted that the Defendant did not indicate to the Plaintiff that it was going to apply for a loan and maintained that the Defendant used the Plaintiff's deposit to leverage for the loan. The Plaintiff submitted that the documents sought were vital for his claim for exemplary damages. The Plaintiff was prepared to meet the cost of photocopying the documents and argued that the Defendant would not suffer any prejudice if it supplied the documents.

Parties filed submissions which the court has considered. The Defendant contended in its written submissions dated 12/5/2015 that it was not possible for it to disclose the requested documents without disclosing the documents for the entire project which would jeopardise the rights of third parties. It argued that the application for the loan was a private contract between it and the Bank and that whether the loan was advanced or not would not assist the Plaintiff in his claim for special damages. It submitted that the Plaintiff was on a fishing expedition.

It relied on the case of **Concord Insurance Company Ltd v NIC Bank Ltd (2013) eKLR** in support of the argument that discovery is limited to the matters in contention and that the court will be guided by the relevance of the documents sought which must be tested by the pleadings in the exercise of its discretion to issue orders as to discovery.

The Defendant maintained that the sale agreement having been rescinded, it was not necessary for the documents sought to be supplied. The Defendant added that parties were bound by the terms of their agreement and that the court should be weary of requests by parties who want the court to re-write the contract.

It is necessary for a party to give discovery of all the relevant documents in its custody to assist the court arrive at a just and fair determination of the dispute. The Defendant only stated that giving the requested documents would jeopardise the rights of other parties but it did not demonstrate what prejudice those parties would suffer if the documents are furnished to the Plaintiff.

The Plaintiffs request for discovery of the documents contained in the request dated 23/3/2015 is allowed.

The Plaintiff will meet the costs of photocopying the documents listed in the request.

Dated and delivered at Nairobi this 13th day of December 2019

K.BOR

JUDGE

In the presence of: -

Ms. Wangui Kamunya for the 1st Defendant

Mr. E. Mwangi for the 2nd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiffs