



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 127 OF 2017

SHAINAZ JAMAL.....1ST PLAINTIFF

EUSEBIO SUDI ABURILI.....2ND PLAINTIFF

ROSE MURUNGA.....3RD PLAINTIFF

NASREEN KAUSER.....4TH PLAINTIFF

JACINTA WANJIHIA.....5TH PLAINTIFF

RAMESH PATEL.....6TH PLAINTIFF

HARPREET KULAR.....7TH PLAINTIFF

CHARLES KIMANI.....8TH PLAINTIFF

JAMES KAHUMBURA.....9TH PLAINTIFF

KENNEDY TOROITICH.....10TH PLAINTIFF

=VERSUS=

ZAHIR ABDULRASUL MANJI.....1ST DEFENDANT

TAZMIN ZAHIR MANJI.....2ND DEFENDANT

R U L I N G

1. On 19/10/2017 the defendants brought a Notice of Motion dated 19/10/2017 inviting the court to clarify the purport of the restraining order issued in this suit on 27/4/2017 in relation to the interior renovation of Villa No 14. The motion is supported by a brief affidavit sworn by the 1st defendant and it is premised upon the ground that the defendants are not clear if the material order relates to both the interior and exterior design of Villa No 14.

2. The 1st defendant deposes that prior to the initiation of this suit by the plaintiffs, he had started the renovations of the interior of Villa No 14. He adds that it is unclear to him whether he would be in breach of the restraining order if he were to continue with the renovations of the interior of Villa No 14. The plaintiffs did not file a response to the motion.

3. I have considered the tenor and import of the motion. I understand the defendants to be saying that they are not sure if they have been restrained against undertaking interior renovations to their Villa. The verbatim order which this court issued reads as follows:-

a. Pending the hearing and final determination of this suit, the Defendants, their agents and or servants are hereby restrained against altering the original design of Villa Number 14 comprised in the Lease registered as Title Number 55492/1 situated in Prestige Villas Estate, Brookside Drive, Westlands, Nairobi.

b. Pending the hearing and final determination of this suit, the defendants, their agents and servants are hereby restrained against blocking the original entrance and or creating a new entrance to Villa Number 14 comprised in the Lease registered as Title Number 55492/1 situated in Prestige Villa Estate.

4. In my view, reference to the “original design” in relation to Villa No 14, and indeed in relation to each of the Villas in Prestige Villas Estate, relates to the original architectural design and layout, original structural design and layout and exterior outlook of the Villas. The order does not in my view bar a villa owner from renovating the interior of his villa to, for instance, give the villa a different interior colour scheme or different kitchen tile work or different interior cupboards.

5. Indeed, this is the view the regulatory authority expressed when it granted approval on 17/5/2016. The approval was captioned “**Authority for welding shelves, painting, floor tiling and roof repairs on Plot No. 1870/III/140 along Brookside Drive, Westlands**” and it read as follows:-

“Authority is hereby granted to carry out the above maintenance works on the referenced plot subject to you having received consent for the same from the Landlord. This letter granting permission to undertake the said repairs does not authorize alterations or additions to the structure and/or plans. Further, only soft paint colours should be used externally. This letter does not grant authority to change the user of the premises or interfere with any tenancy agreement between or among parties to the premises.”

6. In line with the prevailing scheme of things in Prestige Villas Estate, appropriate consent will have to be obtained prior to commencement of the interior renovations. I expect all the residents to be rational, talk to each other, and avoid engaging the court in trivial estate housekeeping issues. In an atmosphere of honourable and good faith engagement amongst residents, this kind of litigation will not be necessary.

7. Lastly, I direct parties to take a hearing date for the main suit. Any party who has not filed a bound, paginated and indexed bundle of pleadings, witness statements and evidentiary documents will have 30 days to do so.

Dated, signed and delivered at Nairobi on this 9th day February 2018.

B M EBOSO

JUDGE

In the presence of:-

Mungai holding brief for Kimani advocate for the Plaintiff

M/s Muthoka holding brief for Jan Mohammed advocate for the Defendants

Halima Court clerk