



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 267 OF 2017

VALEO BUILDING AND CIVIL

ENGINEERING LIMITED.....PLAINTIFF/APPLICANT

VERSUS

BERNARD BOSIRE.....1ST DEFENDANT/RESPONDENT

LAZARUS KIVUVA.....2ND DEFENDANT/RESPONDENT

RULING

1. In the Notice of Motion dated 12th June, 2017, the Plaintiff is seeking for the following orders:

a. That a temporary injunction be issued to restrain the Defendants/Respondents, by themselves or through their agents, servants, employees, family members, relatives and or anybody else claiming under them from remaining, occupying, entering into, constructing any structure, transferring, selling, allocating, encumbering, dealing and or any other manner interfering with Land Reference Number 20323 pending hearing and determination of this suit.

b. That the officer commanding Mlolongo Police Station be served with this order to enforce this order and ensure law and order is maintained.

c. That the cost of this Application be provided for.

2. The Application is premised on the grounds that the Plaintiff is the registered proprietor of land reference number 20323 situate in Machakos; that on 26th May, 2017, the Defendants blocked the Plaintiff from fencing the suit land and that the Defendants are in the process of sub-dividing the suit land with a view of selling it to unsuspecting members of the public.

3. The Defendants filed a Notice of Preliminary Objection in which they averred that the Plaintiff lacks locus to institute the suit and that the Application is defective and an abuse of the court process.

4. In his Replying Affidavit, the 2nd Defendant deponed that the Applicant is not the Director of the Plaintiff's company as alleged; that the Applicant relinquished her shares in the Applicant's company and that the Applicant has concealed material facts from the court.

5. In the Further Affidavit, Susan Wambui (Applicant) deponed that she is a director and shareholder of the Plaintiff; that she has come to learn that changes were effected in the directorship and shareholding of the Plaintiff by removal of her name as a director and shareholder without her knowledge; that she has since complained about the alleged fraud and that her co-director, John Kibiribiri Mwangi, has since being charged with the offence of forgery.

6. The Plaintiff's advocate submitted that the change of the Plaintiff's directorship to remove the Applicant as a director was fraudulent; that the Applicant did not attend the meeting that purported to have taken place on 25th May, 2015 and that the people involved in the fraudulent transaction have been charged.

7. Counsel submitted that the other directors of the Applicant never raised the issue of her directorship when she filed the suit and that the Application should be allowed.

8. The Defendants' advocate submitted that the deponent of the Supporting Affidavit is not a shareholder or director of the Plaintiff; that the Verifying and Supporting Affidavit have not been sworn by an officer authorized by the company and that in the absence of a resolution by the Board of Directors, there is no proper Plaintiff in court.

9. The Defendants have not disputed the allegation that the suit land is registered in the name of the Plaintiff. However, it is the Defendants' deposition that the person who swore the Verifying Affidavit and the Supporting Affidavit (*the Applicant*) ceased to be a director and shareholder of the Plaintiff on 26th May, 2015.

10. The Applicant has denied that she signed the Affidavit of 26th May, 2015 relinquishing her shares in the Plaintiff's company. According to the Applicant, John Kibiribiri Mwangi has been charged in Criminal Case No. 1892 of 2017 for forging the Minutes of the Plaintiff's Board of Directors showing that she had relinquished her shares in the company.

11. The issue of whether the Applicant relinquished her shares in the Plaintiff's company can only be determined either upon the hearing of this suit or after the criminal case that has been instituted has been finalized. However, the Plaintiff, as a legal entity, remains the registered owner of the suit land.

12. The Defendants have not informed the court the interests that they have in the suit land. Indeed, the 2nd Defendant has deponed that they have not trespassed on the suit land.

13. Although the Defendants have relied on the case of *Bugerere Coffee Growers Limited vs. Sebaduka & Another (1970), E.A 147*, where it was held that a resolution has to be passed either at a company or Board of Director's meeting before the filing of proceedings, the said decision was overturned by the Ugandan Supreme Court in the case of *United Assurance Co. Ltd vs. Attorney General SCCA No. 1 of 1998* where it was held as follows:-

“...it was now settled, as the law, that, it does not require a board of directors, or even the general meeting of members, to sit and resolve to instruct counsel to file proceedings on behalf and in the names of the company. Any director, who is authorized to act on behalf of the company, unless the contrary is shown, has the powers of the board to act on behalf of that company.”

14. The above decision has been applied by the Kenyan courts (*See Frubeco China Fushun vs. Naiposha Company Limited & 11 others [2014] eKLR*).

15. Until it is shown that the Applicant was not a director of the Plaintiff as at the time of filing the suit, I find that the suit is properly before me. In any event, the other directors of the Plaintiff have not alleged that the Applicant did not file the suit on behalf of the Plaintiff or that they do not support the Plaintiff's claim. The Defendants cannot therefore be heard at this stage to assert that the Applicant does not have the *locus standi*.

16. The bottom line is that the suit land is registered in favour of the Plaintiff and not the Defendants. Consequently, the Plaintiff has established a prima facie case with chances of success. I therefore allow the Application dated 12th June, 2017 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20TH DAY OF APRIL, 2018.

O.A. ANGOTE

JUDGE