

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.748 OF 2017

INNFIELD INVESTMENT LIMITED.....PLAINTIFF

=VERSUS=

EKA HOTEL.....DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 26th February 2018. The application seeks orders of this court discharging the injunction orders given in *ELC No.751 of 2017 Samco Holdings Limited t/a Eka Hotel Vs Patrick Nyamweya*. The applicant also seeks an order from the court directing both parties to maintain a maximum of three security officers each on the suit property until hearing and determination of this suit and the suit in ELC 751 of 2017. In the alternative the applicant seeks grant of a temporary injunction in terms of prayer 3 of notice of motion dated 12th December 2017.

2. The applicant contends that it is claiming the same property on the ground with the respondent herein; that the court granted orders of maintenance of status quo in ELC 751 of 2017 but later granted interim injunction restraining its director who is a defendant in ELC 751 of 2017. The applicant contends that the injunctive orders were given after the court was misled and that the said injunctive orders should be discharged and an order of maintenance of status quo granted instead.

3. The applicant's application is opposed by the respondent through a replying affidavit sworn on 2nd May 2018 and a further affidavit sworn on 27th March 2018. The respondent contends that the application is an abuse of the process of the court in that it seeks to have orders given in a different file discharged; that the parties in ELC 751 of 2017 and the advocates representing them are different and therefore the applicant is trying to confuse the court into granting orders.

4. I have considered the applicant's application as well as the opposition thereto by the respondent. The issue for determination is whether orders given in a different file can be discharged from another file and whether injunctive orders can be given in the manner sought by the applicant. It is true that there are two related matters touching on the same property. There is no order for consolidation which has been made. If the applicant wanted the orders in ELC 751 of 2017 discharged, it should have made that application in ELC 751 of 2017. However be that as it may what the applicant was seeking in this case has already been achieved vide a ruling delivered on 28th June 2018 in ELC 751 of 2017 wherein the order of maintenance of status quo was granted which order effectively discharged the interim injunction which had been granted.

5. The applicant in prayer 4 is seeking an order of the court directing that each party be allowed to maintain a maximum of three security officers to guard the suit premises until this suit as well as ELC 751 of 2017 are heard and determined. I do not think it necessary for the court to make such an order. I decline to grant the order. I therefore find no merit in the applicant's application which is hereby dismissed. Each party to bear its own costs.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **20th** day of **September 2018**.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Kwamboka for Mr Manwa for applicant

Mr Abdullahi for Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE