



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO.225 OF 2018

SALOME WANYOIKE WAINAINA.....PLAINTIFF/APPLICANT

VERSUS

SUNRISE SYNTHETICS LIMITED.....DEFENDANT/RESPONDENT

RULING

The Plaintiff filed this suit on 9th August 2018 and sought for various orders against the Defendants herein.

Simultaneously, the Plaintiff/Applicant also filed a *Notice of Motion* dated 9th August 2018 and sought for injunctive orders seeking to restrain the Defendant from interfering with the suit property LR.No.4953/1192/1.

However, the Defendant/Respondent replied by filing a *Notice of Preliminary Objection* alleging that the suit herein has been caught by mandatory provision of Section 4(1) of the Limitation of Actions Act Cap 22, as the contract sought to be relied upon was entered more than six years from the date the action accrued.

Though the Court had directed the parties to canvass the said *Notice of Preliminary Objection* first by way of written submissions, the Court too finds that it has a duty to facilitate the expeditious disposal of the matter before it as provided by Sections 1A and 1B of the Civil Procedure Act, which behove the court to adhere to the overriding objective of the Act which is to facilitate **just, expeditious, proportionate** and **affordable** resolution of disputes before the court. In facilitating the above overriding objectives, the Court takes into account efficient use of the judicial time and timely disposal of proceedings.

Further, Rule 31 of the Environment and Land Court Practice Directions behoves the court to direct parties to enter into *status quo* and where the parties are in disagreement, to impose the said *status quo*.

Again Article 159 (2)(d) of the Constitution allows the court to administer justice without undue regard to technicalities.

Bearing in mind the above provisions of law;

- i. The Court finds and directs that the Preliminary Objection herein raised by the Defendant should be incorporated in the main suit so that the court is not called upon to use its limited precious judicial time determining interlocutory applications.*
- ii. Further, as provided by Rule 31 of the Environment and Land Court Practice Directions, the Court will impose an order of status quo and the status quo herein will be maintained by allowing prayers No.5 and 6 of the instant Notice of Motion dated 9th August 2018.*
- iii. Further the Notice of Preliminary Objection dated 26th September 2018, will be held in abeyance and be incorporated in the main suit.*
- iv. The Plaintiff to extract the summons within a period of 14 days from the date hereof and Defendant has 14 days after service to file its Defence and thereafter 14 days after close of pleadings, parties to comply with Order 11.*
- v. Therefore, the parties are granted Leave of 30 days after closure of pleadings to comply with Order 11 and mention on 12th March 2019 before the Deputy Registrar for Pre-trial directions.*
- vi. These directions will apply to ELC No.226 of 2018.*
- vii. The above directions compromises the Notice of Motion dated 9th August 2018.*

It is so ordered.

Dated, Signed and Delivered at Thika this 19th day of December 2018.

L. GACHERU

JUDGE

In the presence of

Mr. Mwangi for the Plaintiff/Applicant

Mr. Maina Ngaruiya for the Defendant/Respondent

Lucy - Court Assistant

L. GACHERU

JUDGE

19/12/2018