



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

E.L.C. CASE NO. 174 OF 2017

KENYA INDUSTRIAL RESEARCH AND DEVELOPMENT STAFF

RETIREMENT & GROUP LIFE ASSURANCE SCHEME (Suing through

Its Trustees namely Arthur S. Onyuka, Jackson O. Omamo, Joseph

K. Kamau, Lilian K. Nkaabu and Agnes C. Kisoryo.....PLAINTIFF

VERSUS

MURANGA ROAD MOTOR MART LIMITED.....DEFENDANT

RULING

The Plaintiff filed the application dated 14/3/2017 seeking orders of injunction to restrain the Defendant from dealing with the land known as L.R. No. Nairobi/Block 107/1133 ("the Suit Property") which it bought and was registered as its owner on 27/7/2016. The Plaintiff also seeks to be allowed to construct a perimeter wall around the Suit Property.

The application is supported by the affidavit of Jackson Omamo. He depones that the Plaintiff is a registered scheme under the Retirement Benefits Authority Act with the mandate to invest the sums it holds on behalf of its members with a view to generating income for the benefit of its members. Based on this mandate, the Plaintiff purchased the Suit Property with a view to developing the property by putting up residential homes to be sold to its members and other third parties for a profit. The Plaintiff purchased the Suit Property from Rockville Junior Academy at the agreed consideration of Kshs. 43.5 Million. The Plaintiff paid this sum and the Suit Property was registered in its name on 27/7/2016.

When the Plaintiff attempted to construct a perimeter wall around the Suit Property, it was stopped and on visiting the Buruburu Police Station its trustees were informed that there was a dispute as to the ownership of the Suit Property. The Plaintiff annexed a copy of the certificate of lease that was issued to it.

The Defendant opposed the application and raised a preliminary objection to the effect that there is another suit pending that is **ELC No. 1382 of 2016** in which the Plaintiff in the instant case is the 4th Defendant in that suit. The Defendant also sued Rockville Junior Academy Ltd as the 1st Defendant in 1382 of 2016. The Plaintiff bought the Suit Property from Rockville Junior Academy Ltd. The Defendant annexed a copy of certificate of lease showing that it was registered as the lessee of Nairobi/Block 107/1133 on 3/5/2012.

The court notes from the documents annexed to the Defendant's Replying Affidavit that Rockville Junior Academy Ltd sued Francis Ng'ang'a Mundia who is a director of the Defendant company in this case and John Ndirangu Kariuki over this same piece of land in **ELC No. 706 of 2011**.

The Plaintiff argued that Obaga J. while referring this matter back to this court on 19/4/2017 made a determination that the two suits were different. The court has looked at the order made by Obaga J. and notes that the Judge did not make any determination. He only referred the parties back to this court so that they could be heard on that issue.

The court has considered the application together with the replying affidavit and the submissions made by parties. Nairobi/Block 107/1133 is the subject matter of three different suits that is ELC No. 706 of 2011, ELC No. 1382 of 2016 and this suit.

Section 1 B of the Civil Procedure Act requires the court to handle the matters presented before it for the purposes of attaining

the efficient disposal of the business of the court, the efficient use of the available judicial resources and timely disposal of proceedings at a cost affordable by the respective parties. When parties file numerous suits over the same subject matter, they impair the courts ability to discharge its duty in an efficient manner.

Section 6 of the Civil Procedure Act enjoins the court not to proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they claim where such suit is pending in a court with jurisdiction to grant the relief claimed. Of these three suits, ELC No. 706 of 2011 was filed first.

The court stays ELC No. 1382 of 2016 and this suit pending the hearing and determination of ELC No. 706 of 2011 which was instituted before the latter two cases.

In light of this, the court declines to grant the orders sought in the application dated 14/3/2017. Each party will bear its own costs.

Dated and delivered at Nairobi this 28th day of September 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Nyaribo for the Plaintiff

Ms. Omambia for the Defendant

Mr. V. Owuor- Court Assistant