



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAIROBI

ELCC NO. 1245 OF 2015

DEL MONTE KENYA LIMITED.....PLAINTIFF

VERSUS

GOSHEN GARDENS LIMITED.....1ST DEFENDANT

PIONEER INTERNATIONAL SCHOOL LIMITED.....2ND DEFENDANT

RULING

The Plaintiff brought this suit against the defendants on 4th December 2015 seeking the following reliefs:-

- a) A permanent injunction restraining the 1st Defendant whether by itself or its agents and/or employees or otherwise whomsoever from trespassing, continuing to trespass, transferring, leasing, subletting, interfering and/or otherwise dealing with the Plaintiff’s property being a portion of the property known L. R. No. 12157/2 (suit Property) including operating a school and/or any other business on the Suit Property or in any other manner howsoever interfering with the Plaintiff’s rights over Suit Property.
- b) A permanent injunction restraining the 2nd Defendant(sic) whether by itself or its agents and/or employees or otherwise whomsoever from transferring possession of the Plaintiff’s property being a portion of the property known L. R. No. 12157/2 to the 2nd Defendant or any other third party.
- c) A permanent mandatory injunction to issue compelling the 2nd Defendant whether by itself or its agents and/or employees or otherwise whomsoever to remove the sign board of ‘**Pioneer Girls School**’ from the Plaintiff property being a portion of the property known as L.R No. 12157/2.

In its plaint dated 4th December 2015, the Plaintiff averred that at all material times, the Plaintiff let to the 1st Defendant a portion measuring 75 acres (hereinafter “**the suit property**”) of all that parcel of land known as L.R. No. 12157/2 for a term of eight (8) years with effect from 3rd September 2013, at a revisable monthly rent of Kshs.550,000/= and on other terms and conditions set out in the lease agreement dated 3rd September 2013. The Plaintiff averred that in the month of February, 2015, the 1st Defendant defaulted in its rent payment obligation under the lease aforesaid following which the plaintiff served the 1st Defendant with a notice to remedy the default and subsequently a 30 days’ notice dated 5th May 2015 terminating the 1st Defendant’s lease in accordance with clause 13 of the lease agreement.

The Plaintiff averred that upon the expiration of the said notice, it requested the 1st Defendant to deliver possession of the suit property, a request which the 1st Defendant declined to honour. The 1st Defendant

instead proceeded to file a suit against the Plaintiff for alleged breach of the lease agreement. The 1st Defendant's suit against the Plaintiff was referred to arbitration on 15th July 2015 pending which arbitration the 1st Defendant was to continue occupying the suit property. The Plaintiff averred that following the said order referring the dispute between the Plaintiff and the 1st Defendant to arbitration, the parties decided to pursue amicable settlement of the matter. The Plaintiff averred that in the course of the meetings that were held between the representatives of the plaintiff and those of the 1st Defendant to resolve the dispute, the 1st Defendant indicated to the Plaintiff its intention to transfer its assets to the 2nd Defendant and inquired from the Plaintiff whether it would have any objection to the 2nd Defendant taking over the 1st Defendant's lease over the suit property. The Plaintiff averred that it made it clear to the 1st Defendant that it would only consider entering into a lease with the 2nd Defendant after the dispute between the Plaintiff and the 1st Defendant had been resolved and the 1st Defendant had handed over possession of the suit property to the Plaintiff.

The plaintiff averred that sometimes in October 2015, it appeared to the Plaintiff that 1st Defendant had handed over the suit property to the 2nd Defendant and when the 1st Defendant was asked to confirm the position, it maintained that it was still in possession of the suit property. The Plaintiff averred that despite this denial by the 1st Defendant that it had handed over possession of the suit property to the 2nd Defendant, on or about 30th November 2015. The 2nd Defendant erected a sign board on the suit property and along Thika – Nyeri Superhighway reading “**Pioneer Girls School**”. The Plaintiff averred that it had not consented to the 2nd Defendant's takeover of the suit property from the 1st defendant. The Plaintiff averred that the 2nd Defendant's entry onto the suit property amounted to trespass and had subjected it to loss and damage.

Together with the plaint the Plaintiff filed an application by way of Notice of Motion dated 4th December 2015 seeking the following prayers:-

1. This application be certified urgent and be heard ex-parte in the first instance.
2. Pending the hearing and determination of this application inter partes, a temporary injunction be issued restraining the 2nd Defendant whether by itself or its agents and/or employees or otherwise whomsoever from trespassing continuing to trespass, transferring, leasing, subletting, interfering and/or otherwise dealing with the Plaintiff's property being a portion of the property known as L.R No. 12157/2 situated within Gatanga Sub-County of Muranga County (the suit Property) including operating a school and/or any other business on the Suit Property or in any other manner howsoever interfering with the Plaintiff's rights over Suit Property.
3. Pending the hearing and determination of this suit, an interlocutory injunction be issued restraining the 2nd Defendant whether by itself or its agents and/or employees or otherwise whomsoever from trespassing, continuing to trespass, transferring, leasing, subletting and/or otherwise dealing with the Plaintiff's Property being a portion of the property known as L.R No. 12157/2 situated within Gatanga Sub-County of Muranga County (the Suit Property) including operating a school and/or any other business on the Suit Property or in any other manner howsoever interfering with the Plaintiff's rights over Suit Property.
4. Pending the hearing and determination of this application inter partes, a temporary injunction be issued restraining the 1st Defendant whether by itself or its agents and/or employees or otherwise whomsoever from transferring possession of Plaintiff's Property being a portion of the property known as L.R No. 12157/2 situated within Gatanga Sub-County to the 2nd Defendant or any other third party.
5. Pending the hearing and determination of this suit, an interlocutory injunction be issued restraining the 1st Defendant whether by itself or its agents and/or employees or otherwise whomsoever from transferring possession of the Plaintiff's Property being a portion of the property

known as L.R No. 12157/2 situated within Gatanga Sub-County of Muranga County to the 2nd Defendant and/or any other third party.

6. Pending the hearing and determination of this application inter partes, a mandatory injunction be issued compelling the 2nd Defendant whether by itself or its agent and/or employees or otherwise whomsoever to remove the sign board of “Pioneer Girls School” from the Plaintiff’s Property being a portion of the property known as L.R No. 12157/2 situated within Gatanga Sub-County of Muranga County.

7. Pending the hearing of this suit, a mandatory injunction to issue compelling the 2nd Defendant whether by itself or its agents and/or employees or otherwise whomsoever to remove the sign board of “Pioneer Girls School” the Plaintiff’s Property being a portion of the property known as L.R No. 12157/2 situated within Gatanga Sub-County of Muranga County.

8. Costs of this application be provided for.

The Plaintiff application for injunction dated 4th December 2015 came up for hearing ex parte on 7th December 2015 when the court directed that the same be served upon the Defendants for hearing inter partes on 17th December 2015. The application was duly served upon the Defendants and the 1st Defendant appointed the firm of Vusha, Onsembe & Mambiri Advocates to act for it while the 2nd Defendant appointed the firm of C. N. Kihara & Company Advocates. When the Plaintiff’s application came up on 17th December 2015, the court granted the Defendants leave to file replying affidavits to the application with liberty to the Plaintiff to file a supplementary affidavit and stood over the application to 20th January 2016 for hearing. In the meantime, the court granted prayers 2 and 4 of the application with a view to preserve the suit property pending the hearing of the application. The said orders granted by the court on 17th December 2015 restrained the 1st Defendant from transferring possession of the suit property to the 2nd Defendant or any third party and the 2nd Defendant from among others, trespassing on the suit property, interfering and/or otherwise dealing with the said property including operating a school and/or any other business on the property. The said court order was extracted, signed and sealed by the Deputy Registrar of the court on 23rd December 2015.

Before the inter partes hearing of the Plaintiff’s application for injunction on 20th January 2016, the Defendants filed two separate applications on 31st December 2015. In its application dated 30th December 2015 (hereinafter referred to as “the 1st Defendants application”), the 1st Defendant sought an order that the hearing date for the Plaintiff’s application for injunction be brought forward and in the alternative, the interim orders that had been granted by the court on 17th December 2015 be varied, set aside and/or discharged. The 1st Defendant’s application was brought on the grounds that the interim orders that had been granted by the court on 17th December 2015 would interfere with the 1st Defendant’s right to run a School on the suit property and that the 1st Defendant’s School could not open for the new term in January, 2016 if the said orders remained in force. On its part, the 2nd Defendant in its application dated 30th December, 2015 (hereinafter “the 2nd Defendants application”) sought, a stay and discharge of the interim orders aforesaid which were made on 17th December 2015 in favour of the Plaintiff and an injunction to restrain the plaintiff from interfering with the 1st defendant’s possession and occupation of the suit property either by itself or through the 2nd Defendant. The 2nd Defendant’s application was brought on among other grounds that the school term was to commence in January and that if the orders of 17th December, 2015 remained in place, the Defendants would suffer irreparable loss arising from the disruption of the academic program which they intended to run on the suit property. The 2nd Defendant contended further that the Defendants also risked potential suits by parents who had already paid school fees and expected their children to be admitted in the school run by the Defendants on the suit property. In his affidavit in support of the 2nd Defendant’s application, the 2nd Defendant’s director, Peter Munga stated that the 1st Defendant was at all material times running a school on the suit property known as **IMANI SCHOOL** and that the 2nd Defendant had expressed interest in running a girls’ school on the

same premises in furtherance of the 2nd Defendant's commitment to girls' child education. He stated that he entered into negotiations with the Plaintiff and the 1st Defendant with the intention of taking over the lease that the Plaintiff had entered into with the 1st Defendant for the purposes of operating the said girls' school and that the said negotiations were pegged on the school calendar which commences in January of every year. He stated that in preparation for the establishment of the said girls' school on the suit property, the 2nd Defendant had invested heavily in rebranding of the suit property and marketing of the new school. The 2nd Defendant had also paid to the 1st Defendant a sum of Kshs. 40 million as goodwill and continues to pay rent for the suit property to the Plaintiff. Mr. Munga stated that the 2nd Defendant had substantially taken over possession of the suit property and had distributed fliers about the 2nd Defendant's intention to establish a girls' school on the suit property to be known as Pioneer Girls School with effect from January 2016.

On 12th January 2016, the Plaintiff filed an application dated 12th January 2016 seeking an order for the arrest and committal of David Kigwe and Peter Munga the officers of the 1st and 2nd Defendants to prison for a term not exceeding six (6) months for disobeying the interim orders which were made herein on 17th December 2016. The Plaintiff's application dated 12th January, 2016 (hereinafter referred to as "the contempt application") was brought on the grounds that the Defendants had disobeyed the orders of 17th December 2015 in that the 2nd Defendant had taken possession of the suit property and was running a school thereon contrary to the terms of the said order.

When the Plaintiff's applications for injunction and contempt and, the Defendants applications mentioned above came up on 20th January 2016, the court ordered that, the Plaintiff's contempt application be heard first and fixed the same for hearing on 15th March 2016. On 4th March 2016 before the hearing date for the Plaintiff's contempt application, Joseph G. Wambugu, John Cheruiyot and Margaret Wakonyo Njoroge suing on behalf of Parents and Teachers Association of PIONEER INTERNATIONAL SCHOOLS (hereinafter referred to as "the applicants") filed an application dated 3rd March 2016 seeking to be joined in this suit as 3rd Defendant and for leave to file a defence. The applicants also sought among others, a stay of the hearing of the plaintiff's contempt application and the interim orders of 17th December 2015 pending the hearing and determination of the Plaintiff's injunction application. The applicant's application dated 3rd March 2016 (hereinafter referred to as "the joinder application") was certified as urgent on 4th March 2016 and fixed for hearing on 15th March 2016 the same date when the Plaintiff's contempt application was to come up for hearing. On 15th March 2016 after hearing submissions by the advocates for all the parties, the court ordered that the joinder application should take precedence over the Plaintiff's contempt application. It is the joinder application which is the subject of this ruling.

The joinder application was brought on the grounds set out on the face thereof and on the supporting affidavit of one of the applicant's, Margaret Wakonyo Njoroge sworn on 3rd March 2016. The application was brought on the grounds that the applicants are parties whose presence before the court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in this suit. The applicants contended that if the reliefs sought by the Plaintiff against the Defendants are granted, the same would result in the closure of Pioneer Girls School to the detriment of the parents and students of the said school. The applicants contended that their joinder in this suit will ensure that whatever way the dispute between the parties goes, the rights of the students of Pioneer Girls School which are guaranteed under Article 53 of the Constitution and section 7 of the Children's Act are not undermined. In her affidavit in support of the application, Ms. Margaret Wakonyo Njoroge described herself as the secretary of the Parents and Teachers Association of Pioneer International Schools and his co-applicants, Joseph G. Wambugu and John Cheruiyot as parents and Chairman and Treasurer respectively of the said Parents and Teachers Association. Ms. Njoroge stated that Pioneer International Schools are owned by the 2nd Defendant and that Pioneer Girls School ("hereinafter "PGS") has, 150 students in forms 1, 2, and 3, 13 teachers and 37 support staff. She stated that she became aware of the interim orders which were issued herein on 17th December 2015 on or around 20th January 2016 and that

the said orders among others restrained the 2nd Defendant from trespassing on or operating a school or any other business on the suit property. She stated that upon consulting the applicant's advocates on record, she was advised that the enforcement of the said orders would entail the closure of the school and physical ejection of all the students and teachers of PGS from the premises. She stated that in view of the foregoing, the applicants are interested parties in these proceedings as they will be affected directly and adversely by the orders which were issued by the court on 17th December 2015 aforesaid and any other order that may be issued herein in favour of the Plaintiff.

The joinder application was opposed by the Plaintiff through grounds of opposition dated 10th March 2016 on a number of grounds. The Plaintiff contended among others that the applicants have not met the threshold for joinder of parties under order 1 rules 3 and 10 of the Civil Procedure Rules, 2010 and that the grounds raised by the applicants as a basis for seeking to be joined in this suit have been raised by the Defendants and would be considered accordingly by the court. The Plaintiff contended further that the applicants have not placed any evidence before the court showing that an entity known as Parents and Teachers Association of Pioneer Schools exists and that the applicants are its duly elected officials. The Plaintiff contended that PGS was being run on the suit property in breach of the orders issued by this court on 17th December 2015 and as such the school was not deserving of any aid from this court. The Plaintiff contended further that the applicants' alleged constitutional rights cannot override the Plaintiff's rights over the suit properly.

When the applicant's application for joinder came up for hearing on 15th March 2016, Mr. Kibe Mungai advocate appeared for the applicants, Ms. Khasindi advocate for the Plaintiff, Ms. Mambiri advocate for the 1st defendant and Mr. Kihara advocate for the 2nd defendant. In his submission, Mr. Kibe reiterated the grounds set out on the face of the application and the contents of the affidavit of Margaret Wakonyo Njoroge which I have highlighted herein earlier. Mr. Kibe submitted that the applicants are adversely affected by the orders already issued by the court and would similarly be affected by further orders which may be issued in favour of the plaintiff in its various applications which are pending herein and as such they should be afforded a hearing by being joined as defendants in the suit. Mr. Kibe cited a number of authorities in support of the joinder application. Ms. Mambiri and Mr. Kihara supported the submissions by Mr. Kibe and urged the court to allow the application. Mr. Kihara submitted that the plaintiff would not be prejudiced by the joinder of the applicants as defendants in the suit.

In her response to the submissions by Mr. Kibe, Mr. Kihara and Ms. Mambiri, Ms. Khasindi relied on the Plaintiff's grounds of opposition dated 10th March 2016. Ms. Khasindi submitted that the joinder application has been made at the behest of the 2nd Defendant which had unsuccessfully tried to set aside the interim orders which were granted herein on 17th December 2015. Ms. Khasindi submitted that the applicants have not met the threshold for joinder of parties to a suit. She submitted that the applicants have not demonstrated their interest in the property the subject of the suit. Ms. Khasindi submitted that the issues which have been raised by the applicants as the basis for their application to be joined in the suit have already been raised by the Defendants. Ms. Khasindi submitted further that there is no basis for the orders sought in paragraphs 5 and 6 of the applicant's application. In response to Ms. Khasindi's submission, Mr. Kibe submitted that the Plaintiff did not file a replying affidavit in opposition to the joinder application and as such it was not open for it to raise factual issues in opposition of the joinder application.

I have considered the joinder application together with the affidavit which was filed in support thereof. I have also considered the grounds of opposition that was filed by the plaintiff in opposition to the application. Finally, I have considered the respective submissions by the advocates for the parties and the authorities which were cited in support thereof. The joinder application was brought under among other, Order 1 rule 3 and 10 of the Civil Procedure Rules. Order 1 rule 3 of the Civil Procedure Rules provides as follows:-

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against

such persons any common question of law or fact would arise.”

Order 1 rule 10 (1) to (4) of the Civil Procedure Rules on the other hand provides as follows:-

(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.

(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.

(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

Order 1 rule 3 of the Civil Procedure Rules provides for the person who may be joined as defendants in a suit and Order 1 rule 10 empowers the court to substitute and add parties to an existing suit like in the present case. In my view, under Order 1 rule 10(2) of the Civil Procedure Rules, the court can only join a person as defendant to an existing suit in two instances, first, where such person ought to have been joined as a defendant under Order 1 rule 3 of the Civil Procedure Rules aforesaid and was not so joined and secondly, where the presence of such person before the court may be necessary in order to enable the court to adjudicate and settle all questions involved in the suit. As concerns their prayer to be joined in this suit, the onus was upon the applicants to bring themselves within the provisions of Order 1 rule 10 of the Civil Procedure Rules. I am in agreement with the submissions by the Plaintiff that the applicants have not met the threshold for joinder set out in Order 1 rule 10 of the Civil Procedure Rules. The Plaintiff's claim against the Defendants is based on trespass. The Plaintiff has sought from the Defendants vacant possession of the suit property and mesne profits. The Defendants have denied the Plaintiff's claim and have raised counter-claims. The 1st Defendant's counter-claim is against the 2nd Defendant which it has claimed is occupying the suit property without any lawful basis. The 1st Defendant has contended that it has always been prepared and ready to handover possession of the suit property to the plaintiff its lease with the Plaintiff having been terminated. The 1st Defendant has contended that it has been prevented from handing over the suit property to the plaintiff due to the 2nd Defendant's illegal occupation thereof. In its counter-claim against the Plaintiff and the 1st Defendant, the 2nd Defendant has claimed that it is entitled to occupy the suit property for the remainder of the term of the lease that the Plaintiff had entered into with the 1st Defendant on 3rd September 2013. The 2nd Defendant has sought several declaratory reliefs against the Plaintiff and the 1st Defendant. The 2nd Defendant has also sought an injunction to restrain the Plaintiff from interfering with its possession and operation of a school on the suit property and exemplary and aggravated damages.

The subject matter of the parties' dispute herein is the suit property and the main issues which arise for determination are whether the 2nd Defendant is occupying the suit property lawfully and, if it is not, whether it should be ordered to hand over vacant possession of the same to the Plaintiff. I am unable to see any legal connection between the applicants and the subject matter of the dispute herein or the issues in dispute between the parties. The applicants have claimed to be representing the parents and teachers of the pupils who are learning in PGS. The applicants have not established that the parents and teachers of

the pupils in PGS have any legal interest in this suit. They have not demonstrated that the outcome of this suit would affect them legally or in other words, that the same may curtail their legal rights.

In the case of **Deported Asians property Custodian Board vs. Jaffer Brothers Limited (1999)1E.A 55 (SCU)** which was cited with approval in the case of **Pravin Bowry vs. John Ward and another (2015) eKLR** that was cited by the applicants herein, the court stated among others that:-

“For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders which the Plaintiff seeks in the suit, would legally affect the interest of that person, and that it is desirable, for avoidance of multiplicity of suits to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on application by a defendant) to be joined as a co-defendant where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

In the case of **Werrot and Company Ltd. and others vs. Andrew Douglas Gregory and others, Nairobi(Milimani) HCCC No. 2363 of 1998(1998)LLR2848(CCK)**, Ringera J.(as he then was) stated that,

“For determining the question whom is a necessary party there are two tests: (i) There must be a right to some relief against such party in respect of the matter involved in the proceedings in question and, (ii) It should not be possible to pass an effective decree in the absence of the party”.

In the case of **Kingori vs. Chege& 3 others[2002]2 KLR 243**, Nambuye J.(as she then was) held that,

“An applicant seeking to be joined in a suit must demonstrate that he is a necessary and proper party and in the case of a defendant, there must exist a relief flowing from that defendant to the plaintiff.”

In the same case, Nambuye J. stated that parties cannot be added so as to introduce a new cause of action or to alter the nature of the suit and that a proper party to a suit **“ is one who has a designed subsisting direct and substantive interest in the issues arising in the litigation. An interest which will be cognizable in the court of law. That is an interest which the law recognizes and in which the court will enforce”**.

In the present case, the applicants have not demonstrated that they have any legal interest in the subject matter of this suit or the issues arising for determination in the suit. The applicants are parents and teachers of the pupils who are learning in PGS which is said to be owned by the 2ndDefendant. In my view, the applicants have no interest in the suit property independent of the 2ndDefendant. I am not in agreement with the contention by the applicants that the running of a school on the suit property confers some legal interest in the suit property upon the pupils learning at the school. As stated in the cases cited above, for a party to be joined in a suit, he must have a legal interest in the in the subject matter of the suit. I don't think that commercial interest, personal loss or mere inconvenience would suffice. The applicant's concern as I see it is that if the plaintiff succeeds in this case, the parents of the pupils in PGS will have to look for new schools for their children and the teachers will lose their employment. I am not convinced that the inconvenience to the applicants and loss of jobs that would ensue if the plaintiff succeeds in this suit would justify the joinder of the applicants in the suit.

In my view, the Plaintiff's contention that the interest which the applicants seek to advance upon being joined in the suit is that of the 2ndDefendant is not farfetched. The 2ndDefendant is said to be the owner of PGS. The interests of the 2ndDefendant and the applicants are the same. I am unable to see why the applicants cannot participate in these proceedings through the 2ndDefendant. In addition to their failure to demonstrate legal interest in the subject matter of this suit, the applicants also failed to place before this

court any proof of the existence of “PARENTS AND TEACHERS ASSOCIATION OF PIONEER SCHOOLS”. There was also no evidence that the applicants are officials of that entity and that they have been authorized by it to file the present application. I am of the opinion that the joinder of the applicants in this suit would not serve the interest of justice.

Whether or not to join a party to a suit is an exercise of judicial discretion which has to be exercised having regard to all the facts and circumstances of each case. In the circumstances of this case, I am of the view that adding the applicants who have no direct interest in the subject matter of this suit as defendants in the suit would cause prejudice to the plaintiff as it would among others unnecessarily widen the issues which would need to be settled and determined by the court.

In addition to the prayer for joinder, the applicants had also sought a stay of the interim orders that were issued herein on 17th December 2015 and the suspension of the hearing of the plaintiff’s contempt application pending the hearing of the plaintiff’s application for injunction inter-parties. Having held that applicants have not established sufficient grounds that would justify their joinder in this suit, it is not necessary for me to consider the merit of these other prayers. I wish to add that, even If I had considered these prayers on merit, I would not have granted the same. I am in agreement with the Plaintiff that no valid reason has been put forward by the applicants towarrant the grant of prayers 5 and 6 in the applicant’s application. The applicants have not advanced any reasonable justification for staying the interim orders that were granted herein on 17th December 2015 and the suspension of the hearing of the Plaintiff’s contempt application. The applicants’ contention that the Plaintiff is trying to obtain possession of the suit property through the said application has no basis.

In the final analysis and for the reasons set out above, I find no merit in the Notice of Motion dated 3rd March 2016. The same is accordingly dismissed with costs to the Plaintiff.

Delivered and Dated at Nairobi this 1st day of July, 2016

S. OKONG’O

JUDGE

In the presence of

Ms. Khasindi for the Plaintiff

Mr. Kibanya for the 1st Defendant

Mr. Kibe h/b for Kihara for the 2nd Defendant

Mr. Kibe for the Applicants

Kajuju Court Assistant