



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO. 209 OF 2014

NYUMBA BAHARINI VILLAGE.....APPLICANT/PLAINTIFF

=VERSUS=

1. MELINA INVESTMENT LIMITED

2. CHRISPUS CHENGO MASHA T/A

MUSENA AGENCY.....DEFENDANTS/RESPONDENTS

R U L I N G

Introduction:

1. What is before me is the Application by the Plaintiff dated 7th November 2014 seeking for the following orders:

That pending hearing and determination of this Application and suit a temporary injunction do issue restraining the Defendants, agents and employees from interfering with the management of “condominium nyumba baharini” and denying access the new administration (GUYO JOHN GUYO) to the demised property and the defendants be compelled to produce all previous records and bank accounts of the condominium.

2. The said Application is not supported by any ground contrary to the provisions of Order 51 Rule 4 of the Civil Procedure Rules which is in mandatory terms. The said Rule states as follows

“Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit, intended to be used shall be served.

3. The Application should therefore fail on that ground alone. I shall however proceed to deal with the Application on its merit.

The Plaintiff's case:

4. According to the Affidavit of the Administrator of the Plaintiff, the Plaintiff is the

management company in charge of common areas in the condominium known as “Nyumba Baharini”; that the 1st Defendant has constructed houses which it has leased to the residents of Nyumba Baharini Village in Watamu and that the 2nd Defendant was contracted by the 1st Defendant to provide security services on a temporary basis.

5. According to the deposition of the said Administrator, the residents of Nyumbani Village appointed him as the administrator of the village and that the 1st Defendant has refused to identify him as the administrator of the village.

The Defendant's case:

6. The 1st Defendant filed a Notice of Preliminary Objection in which it averred that there is no privity of contract between the Plaintiff and the 1st Defendant in respect of Chembe/Kibabamshe/402 and the various subleases.

7. The 1st Defendant has further averred that the Plaintiff has no locus standi to bring this suit and that the 1st Defendant has the legal right to appoint a managing agent for Nyumba Baharini Village standing on plot number Chembe/Kibabamshe/402.

8. The 1st Defendant also filed a Replying Affidavit in which its Director reiterated the averments in the Notice of Preliminary Objection.

9. In his Replying Affidavit, the 2nd Respondent deponed that the 1st Defendant did appoint him as the Administrator of Nyumba Baharini Village vide a letter dated 5th September 2014.

Analysis and findings:

10. The Plaintiff is seeking for an injunction to restrain the Defendants from managing the operations of “Nyumba Baharini” which comprises houses standing on land known as Chembe/Kibabamshe 402.

11. The said land is registered in the name of the 1st Defendant.

12. Although a copy of the certificate of incorporation for the Plaintiff has been annexed on the Supporting Affidavit, there is no evidence to show the relationship between the Plaintiff and the suit property.

13. There is also no evidence to show who are the directors or shareholders of the Plaintiff and how Guyo John Guyo was appointed to be the administrator of the so called Nyumba Baharini Village on 4th November 2014.

14. Having admitted that the 1st Defendant is the lessor of Chembe/Kibabamshe/402 and that it has constructed houses on the said land, I find and hold that in the absence of a contract in writing between the Plaintiff and the 1st Defendant on the management of those houses, the Plaintiff has not established a prima facie case with chances of success.

15. Indeed, the Plaintiff has not shown that he has the locus standi to file this suit or even to appoint an administrator to manage the houses standing on the suit property.

16. For those reasons, I dismiss the Plaintiff's Application dated 14th November 2014 with costs.

O. A. Angote

Judge