



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 1101 of 2013

AVID DEVELOPERS LIMITED.....PLAINTIFF

VERSUS

BLUE HORIZON PROPERTIES LIMITED.....DEFENDANT

RULING

The Plaintiff herein, *Avid Developers Limited* filed this suit against the Defendant *Blue Horizon Ltd*, seeking for various Orders. The Defendant filed their *Defence* to the *claim* and also a *counter claim*. The Defendant averred in its Defence that, it is the owner and is entitled to the possession of the Land known as *LR No. 20150, Municipal Council of Mavoko*, which the Plaintiff has also laid a claim over. The suit was filed on *17th September, 2013*.

After the Interlocutory Application was determined on *11th July 2014*, the matter was set down for Pre-trial Conference on *10th November 2014*. The Plaintiff's advocate was present for the Pre-trial Conference and it was alleged that the Defendant was served but failed to turn up in Court for the Pre-trial directions.

Consequently, the matter was certified ready for hearing and parties were directed to take a hearing date at the Registry. Following the above directives by the Court, the suit was set down for hearing on *25th February 2015*, whereat *Mr Gitau* appeared in Court and sought for adjournment as the Defendant intended to join *National Land Commission* and the *Attorney General* as 2nd and 3rd Defendants herein. The Plaintiff was ready to proceed with the suit. The Court did allow the adjournment and further directed the Defendant to file an application for joinder of the stated parties within a period of *45 days* from *25th February 2015*.

Consequently, the Defendant filed a Notice of Motion dated *2nd April 2015*, and sought for these orders.

- a. *That the Attorney General (sued for and on behalf of the Chief land Registrar and the National Land Commission be enjoined to these proceedings as 2nd and 3rd Defendants.*
- b. *That the costs of this application be provided for.*

The application was premised on the grounds stated on the face of the application and on the supporting Affidavit of *Mr. Abdulkarim Saleh Muhsin*. These grounds are;-

- i. ***That the proposed second and third Defendants are parties that ought to be enjoined as Defendants and whose presence before the Court is absolutely necessary to enable the Court effectively and completely adjudicate upon the matter and settle all questions involved in the said suit.***
- ii. ***That joinder of the said parties will enable this Court to reach a final determination as to the ownership of the suit property.***
- iii. ***That orders may be made in this case that would need to be enforced by the said parties and it is thus essential that they be joined as parties to the case.***
- iv. ***No prejudice will be suffered by any of the parties if these orders are granted.***
- v. ***Unless these orders are granted, the Defendant/Applicant stands to suffer irreparable loss and damages.***

In his supporting Affidavit, **Mr. Abudulkarim Saleh Muhsin** averred that because the ownership of the suit property is contested between the Plaintiff and the Defendant, and the proposed Defendants are the custodian of the Public leased records, then they are best placed to provide evidence that would aid in deciding the matter. Further that since the Plaintiff and the Defendant have documents of ownership. It is necessary for the proposed Defendants to explain how they came into being.

The Defendant through **James Mwangi Kamau**, one of its Directors swore a Replying Affidavit and denied that the parties sought to be enjoined in the suit are necessary parties. It was his averments that the application herein is a delay tactic on the part of the Defendant as the suit had been certified ready for hearing. Further that since the prayers sought are discretionary; the same should not be exercised in favour of the Defendant/Applicant. It was his contention that the Chief Land Registrar had summoned the Defendant on **31st October 2013**, to attend his office with the title documents for the lands office to get to the bottom of this matter but the Defendant did not bother to attend . Therefore the Defendant does not merit the Order sought and the same should be declined.

The Court on **21st April 2015** directed the parties herein to file their Written Submissions over this Notice of Motion dated **2nd April 2015**. The matter was mentioned on **20th May 2015**, but the Defendant /Applicant and its Advocate did not turn up to prosecute their application. The matter was therefore reserved for Ruling without the Defendant/Applicant's submissions as they failed to comply with the time frame set by the Court without an explanation.

This Court has considered the instant application and the relevant laws. The Court has also considered the Written Submissions by the Plaintiff/Applicant.

The application was filed by the Defendant herein on **2nd April 2015**. The Defendant did not turn up in Court on **21st April 2015**, when the suit came up for mention to confirm filing of the application. However, the Plaintiff /Respondent advocate was present and directions were issued by the Court. The Defendant was served with a Mention Notice as evidenced from Return of Service filed on Court on **20th May 2015**. The Mention Notice had been received by the law firm of **Okao & Co. Advocates** who have been acting for the Defendant/Applicant. The said advocate did not turn up in Court nor file his Written Submissions. The Notice of Motion dated **2nd April 2015**, is therefore not prosecuted. The same is opposed by the Plaintiff/Respondent. The Plaintiff has filed its submissions in opposition to the instant application. The said written submissions are not challenged.

Though **Order 1 Rule 3 of the Civil Procedure Rules** gives the Court discretion to enjoin all persons as Defendant against when any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction where it is alleged to exist any common question of law or fact, the applicant did not turn up to prosecute its application and convince the Court why the parties named in its application should be enjoined. The Plaintiff has alleged that the parties sought to be

enjoined are not necessary parties and that the Court cannot direct additional parties against whom the Plaintiff does not wish to bring a claim against. The Defendant was not present to refute that averment by the Plaintiff.

The Plaintiff further submitted that the current application by the Defendant was only meant to delay the hearing of the suit given that the Defendant failed to attend the pre-trial conference. Against that averment has not been disputed by the Defendant/Applicant.

For the above reasons, the Court finds that the Notice of Motion dated **2nd April 2015**, was not prosecuted. The Court upholds the Plaintiff/Respondents objection to the said Notice of Motion and dismisses the same with costs to the Plaintiff/Respondent.

It is so ordered.

Dated, Signed Delivered this **10th** day of **July, 2015**

L. GACHERU

JUDGE

In the presence of

..... for the Plaintiff/Respondent

..... for the Defendant/Applicant

Hilda: Court Clerk

L. GACHERU

JUDGE