



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 27 OF 2012

MIRKO BLAETERMAN(SUING THROUGH HIS POWER OF ATTORNEY

SHABIR HATIM ALI.....1ST PLAINTIFF

PUBLIC TRUSTEES(SUING ON BEHALF OF

HELMUT KOSTER.....2ND PLAINTIFF

=VERSUS=

DAVID MWANGI MUIRURI.....1ST DEFENDANT

G.HOTMANN COTOV.....2ND DEFENDANT

EMPIRERS AND PARTNERS INVESTMENTS.....3RD DEFENDANT

R U L I N G

Introduction

1. What is before me is the Application by the 1st and 2nd Defendants dated 10th March, 2014 seeking for the following orders;-

(a) THAT the Honourable Court be pleased to declare the orders of injunction given on 6th November, 2012 have automatically lapsed by the Application of Order 40 Rule 6 of the Civil Procedure Rules.

(b) THAT the Honourable Court be pleased to declare that the orders of injunction dated 6th November 2012, orders 1 and 2, have lapsed and therefore be discharged for non-compliance with the terms granting the injunction orders.

The Defendants'/Applicants' case:

2. According to the affidavit of David Mwangi Muiruri, the 1st Plaintiff complied with the order of the court which required him to file in court a blank guarantee for security of damages/costs.

3. However, it has been deponed, the said blank guarantee was to be renewed annually; that the bank guarantee that was deposited has never been renewed and that the 1st Plaintiff has therefore failed to comply with the order of the Court.
4. The 1st Applicant has further deponed that the order of injunction has lapsed pursuant to the provisions of Order 40 Rule 6 of the Civil Procedure Rules and that the suit property has suffered great damage from fire.

The Plaintiff's/Respondents' case

5. The Plaintiffs/Respondents did not file their Replying Affidavit. The 1st Plaintiff filed his Grounds of Opposition on the day the Application came up for hearing.
6. In the Grounds of Opposition, the 1st Plaintiff averred that it is the 1st Defendant who has caused the delay in prosecuting the matter by filing one Application after the other.

Submissions

7. The 1st Defendant and the 1st Plaintiff's advocate appeared before me on 6th May, 2014 and made oral submissions. The submissions simply reiterated what I have already summarized above.

Analysis and Findings

8. On 7th November 2012, Meoli J issued an injunction in favour of the 1st Plaintiff. The injunction restrained the Defendants from trespassing into, remaining on, selling, alienating or dealing in any other manner with the suit property pending the determination of both H.C.C.C No. 27 of 2012 (this suit) and Criminal Case number 345 of 2012.
9. The order of injunction was granted subject to depositing by the 1st Plaintiff a bank guarantee valid for one year and renewable annually in the sum of Ksh.1 million from a reputable bank by way of undertaking for damages and costs.
10. The 1st Plaintiff obtained a bank guarantee from Chase Bank. According to the bank guarantee that has been annexed on the Defendant's Supporting Affidavit, it was to remain in force up to and including 13th November 2013. The 1st Defendant/Applicant has annexed on his Affidavit a letter dated 7th March, 2014 from Chase Bank in which the bank has stated that the guarantee that it had given pursuant to the order of the court expired on 13th November, 2013 and was never renewed.
11. The injunctive order was granted by the court on condition that the bank guarantee given by the 1st Plaintiff shall be renewed annually. That has not happened. Indeed, under Order 40 Rule 2 (2) of the Civil Procedure Rules, the court may grant a party an injunction on such terms as to giving of security or otherwise. That is what Meoli J did.
12. Considering that the 1st Plaintiff did not renew the bank guarantee as directed by the Court, I shall, which I hereby do, discharge the order of injunction granted by this Court on 11th September, 2012 and issued on 7th November, 2012. The 1st Plaintiff shall pay the costs of the Application.

Dated and delivered in Malindi this **20th** day of **June**, 2014.

O. A. Angote

Judge