Cinatine Enterprises Limited v Athi River Housing Company Limited & another (Environment & Land Case 152 of 2019) [2024] KEELC 3847 (KLR) (15 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3847 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 152 OF 2019

JA MOGENI, J

MAY 15, 2024

BETWEEN

CINATINE ENTERPRISES LIMITED ..... PLAINTIFF

AND

ATHI RIVER HOUSING COMPANY LIMITED ..... 1ST DEFENDANT

CADILLA LIMITED ..... 2ND DEFENDANT

RULING

1. This Court is called upon to determine two applications. Each of the parties have applications as follows: -

    a. The Plaintiff filed a Notice of Motion Application dated 5/02/2024 pursuant to the provisions of Sections 3 & 3A of the *Civil Procedure Act*, Order 42 Rule 6 & Order 51 Rule 1,3 & 4 of the Civil Procedure Rules 2010 and all enabling provisions of the Law. The Plaintiff is seeking for the following Orders:

        1. Spent.

        2. Spent.

        3. Thata temporary injunction be issued restraining the Defendants either by themselves, their agents, servants and or any person authorized by them from proclaiming the Plaintiff Director's movable items, levying distress for rent, evicting the Plaintiff's Director Mr. Hezbon Omondi, interfering with the peaceful occupation of the suit property known as Royal Paradise House Number 7 L.R No.209/18492 IR No. 109923 owned by the Plaintiff pending the hearing and determination of this suit

        4. That in the alternative and without prejudice for the above, status quo be maintained pending the hearing and determination of the suit and for avoidance of doubt the

Plaintiff's Director Mr. Hezbon Omondi do continue in occupation on the suit property as he has been since he took possession thereto.

5. That the costs of this application be borne by the Defendants; and

6. Any other relief that the Honourable Court deems fit and appropriate to grant.

b. The 1st and 2nd Defendants filed a Notice of Motion Application dated 7/02/2024 under the provisions of Sections 1A and 3A of the *Civil Procedure Act*, Order 2 Rule 15(1) & Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of the Law. The 1st and 2nd Defendants are seeking for the following Orders:

1. Spent.

2. Spent.

3. That this Honourable Court do strike out the Pleadings against the 1st and 2nd Defendants as the Plaintiff/Respondent has failed to disclose any reasonable cause of action against the Defendants/Applicants.

4. That should this Honourable Court deems it fit not to grant prayer number 3 herein above, this Honourable Court do hereby direct the Plaintiff/Respondent herein to deposit subsequent monthly rent to this Honourable Court over the property known as House No. 7, Royal Paradise Estate, situate on the land known as L.R. No. 209/18298 (I.R. 109923) pending the hearing and determination of the Suit.

5. That this Honourable Court do issue any such other and/or further Orders as justice of the case herein may demand.

6. That costs for this Application be provided for.

2. The grounds are on the face of both applications dated 5/02/2024 and 7/02/2024 and are listed as in paragraph (a) – (j) and 1-18 respectively. I do not need to reproduce them here.

3. The application dated 5/02/2024 is supported by the affidavit sworn by Hezbon Omondi, a director of the Plaintiff herein sworn on 5/02/2024 and the application dated 7/02/2024 is supported by the affidavit sworn by Devraj Ravji Lalji, a director of the 1st and 2nd Defendant Companies herein, sworn on 7/02/2024.

4. The Application dated 5/02/2024 is not opposed. The Application dated 7/02/2024 is opposed. There is a Replying Affidavit sworn by Hezbon Omondi, a director of the Plaintiff Company on 19/02/2024.

5. On 16/04/2024, the Court directed that both the Applications be canvassed by way of written submissions and a Ruling date was reserved. By the time of writing of this ruling, the Plaintiff is the only one who had duly submitted and I have considered them. The Plaintiff filed written submissions dated 17/04/2024 on 25/04/2024.

6. The Court has now carefully read and considered the two Applications dated 5/02/2024 and 7/02/2024 respectively, the Plaintiff counsels' written submissions and the Pleadings in general and finds that the issues for determination are whether the Plaintiff's Application is merited and whether the 1st and 2nd Defendants' Application is merited.

Whether the Plaintiff's Application dated 5/02/2024 is merited

7. The Plaintiff's Application dated 5/02/2024 relates to the grant of temporary injunctive relief pending the hearing and determination of this suit.

8. The substantive law on this matter is Order 40 Rule 1(a) of the Civil Procedure Rules 2010 which provides:

> " Where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongly sold in execution of a decree ... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders."

9. It was long established and continues to be good Law that temporary injunctions are granted upon the satisfaction of tripartite conditions to wit: whether the Applicant has established a prima facie case; whether upon examination of the prevailing circumstances it becomes clear that the Applicant stands to suffer irreparable loss that the Respondent would be hard pressed to assuage by an award of damages and finally, where there was still doubt, it would be in order to consider in who's favour the balance of convenience tilted. These principles were established in Giella vs. Cassman Brown & Co. Ltd 1973 E.A 358.

10. While discussing the conditions precedent to obtaining an Order of injunctive relief, the Court of Appeal in Nguruman Ltd v. Jan Bonde Nielsen & 2 Others, [2014] eKLR observed that:

> " In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:
>
> (a) establish his case only at a prima facie level,
>
> (b) demonstrate irreparable injury if a temporary injunction is not grated, and
>
> (c) ally any doubts as to (b) by showing that the balance of convenience

11. Bearing the above in mind, the first stop of the journey towards my final determination is whether the Applicants have established a prima facie case. A prima facie case was defined in Mrao Ltd v. First American Bank of Kenya Ltd& 2 Others [2003] eKLR, where Bosire, JA stated as follows:

> " So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."

12. The Court of Appeal deliberating what amounted to a prima facie case in Nguruman (Supra) made the following comments: -

> " We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right, which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The applicant

need not establish title it is enough if he can show that he has a fair and bona fide question to raise as to the existence of the right, which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view that on the face of it the applicant's case is more likely than not to ultimately succeed."

13. Having established the school of judicial thought I ought to abide, I shall now fix my gaze upon this instant application all the while cautioning myself not delve into the intricacies of the case as that is a preserve of the substantive suit.

14. A key point of contention in this matter is the specific performance emanating from the sale and purchase of parcel of land known as LR No. 209/10638 IR 48328/1. The Plaintiff contended that should the 2nd Defendant proceed with the attachment of the Plaintiff director's moveable items on the premises that he is a tenant, then the instant suit shall be rendered nugatory.

15. In considering the above circumstances, it is better to safeguard and maintain the status quo for a greater justice than to let the status quo be disrupted by not granting the interlocutory injunction and after hearing the application, find that a greater injustice has been occasioned. The guiding principle of the overriding objective is that the court should do justice to the parties before it and their interests must be put on scales.

16. I note that this application was also brought under the provisions of Sections 3A of the *Civil Procedure Act*, which grants this court a wide discretion to grant interlocutory orders as may appear to be just and convenient.

17. The Black's Law Dictionary, Butter Worth's 9th Edition, defines status quo as a Latin word which means 'the situation as it exists'. The purpose of an order of status quo has been reiterated in a number of decisions.

18. In the case of Republic v National Environment Tribunal, Ex-parte Palm Homes Limited & Another [2013] eKLR, Odunga J. stated: -

> "When a court of law orders or a statute ordains that the status quo be maintained, it is expected that the circumstances as at the time when the order is made or the statute takes effect must be maintained. An order maintaining status quo is meant to preserve the existing state of affairs...Status quo must therefore be interpreted with respect to existing factual scenario..."

19. In the case of Kenya Airline Pilots Association (KALPA) v Co-operative Bank of Kenya Limited & another [2020] eKLR, the purpose of a status quo order was explained as follows: -

> "... By maintaining the status quo, the court strives to safeguard the situation so that the substratum of the subject matter of the dispute before it is not so eroded or radically changed or that one of the parties before it is not so negatively prejudiced that the status quo ante cannot be restored thereby rendering nugatory its proposed decision."

20. Having considered the facts that have emerged in this case and the evidence adduced by way of affidavit, it is the view of the court that apart from preserving the substratum of the subject matter, an order of status quo is a case management strategy, where the Court will be keen to prevent prejudice as between the parties to a matter pending the hearing and determination of the main suit. The circumstances in this matter demonstrate that both parties as it stands have an interest that needs to be preserved pending the determination of this suit. To meet the end of justice, neither party should be prejudiced.

21. Having discussed the definition and purpose of a status quo order, the next question is the nature of the order and whether it differs from an injunctive order. In the case of Fatuma Abdi Jillo v Kuro Lengesen & another [2021] eKLR, it was stated as follows: -

> " Murithi Jin Boabab Beach Resort as quoted by F. Tuiyot Saifudeen Abdullahi & 4 Others in Mombasa High Court Misc. Civil Cause No. 11 of 2012, described the nature of a status quo order as follows: "In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint."

22. Further, in the case of Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others [2015] eKLR, Onguto J. stated that an order of status quo can be given by the court exercising its general jurisdiction and that the order need not necessarily be prayed by the parties and in fact, can be originated by the court.

> " Firstly, an order of status quo will issue through a judicial process. Where the court in exercise of its general or statutory jurisdiction grants orders for maintenance in situ of a particular state or set of facts... the second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order, it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts' further orders. It is intended to also freeze the state of affairs. State of affairs however do not always remain static, so it is always crucial for the court to be very specific and neat in its description of what state of affairs is to be preserved."

23. Odunga J. in the case of Thugi River Estate Limited (supra) goes further to set out the proper manner in which the court ought to frame a status quo order, especially where it is one that the court has originated. He stated that;

> " .... Ordinarily where it is the court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of the counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind."

24. In summary from the above cases, the following matters relating to status quo orders are emergent; that status quo orders can be made by the court on its own motion in the exercise of its general jurisdiction; that status quo orders can be issued for the purpose of preserving the subject matter of the property,

for case management reasons and in a bid to prevent prejudice from being visited against either party to the case; that status quo orders are different from injunctions, meaning that the considerations to be established for grant of injunctions are not necessary under status quo orders; and that a court originating status quo orders to explicitly frame the state of affairs to be preserved.

25. Arising from all the above, this Honourable Court proceeds to make the following findings: -

    a. The Plaintiff's Application dated 5/02/2024 succeeds in terms of prayer 4. That the Court issues an order for status quo to be maintained on the suit properties meaning there shall be no interference with the Plaintiff's quiet possession of all that parcel of land known as LR No. 209/10638 IR 483328/1 & LR No. 209/18298 IR 109923 until this suit is heard and determined.

    b. That there shall be maintained peace and tranquility by all the parties and their agents at the suit properties at all times during the pendency of this suit until it is heard and determined.

    c. Costs shall be in the cause.

Whether the 1st and 2nd Defendants' Application dated 7/02/2024 is merited.

26. The Court has now carefully read and considered the 1st and 2nd Defendants' Application dated 7/02/2024, the Plaintiff's replying affidavit and the Plaintiff's submissions and the issues for determination are as follows: -

    a. Whether the Plaintiff has locus to institute this suit.

    b. Whether the Plaintiff's suit should be struck out.

    c. Whether the Court can direct the Plaintiff to deposit monthly rent to this Court pending the determination of the suit.

Whether the Plaintiff has locus to institute this suit

27. I will first consider the issue of locus on the part of the 1st plaintiff since this is a matter that should have been brought by way of preliminary objection since it is a point of law. The capacity of a party to bring a matter before a court of law is not a matter of fact but of law and it needs to be determined first before I delve into other issues of the application. Now, the Defendants contend that the Plaintiff/Respondent has no locus to institute legal proceedings against the 2nd Defendant/Applicant over the Suit Property known as House No. 7, Royal Paradise Estate, situate on the land known as L.R. No. 209/18298.

28. It is the Defendant's case that the Plaintiff/Respondent filed a Suit against the 1st and 2nd Defendants before this Honourable Court dated 8/05/2019. The Plaint dated 8/05/2019 was amended and the Amended Plaint dated 27/09/2019 against the 1st and 2nd Defendants was admitted by this Honourable Court. The aforementioned Amended Plaint was verified by one Hezbon Omondi, a Director/ Shareholder at the Plaintiff/Respondent Company. It is their contention that at the time this Suit was being instituted and filed before this Honourable Court, the said Hezbon Omondi was not a Director/ Shareholder at the Plaintiff/Respondent's Company. In support of this allegation, they produced a CR12 for the Plaintiff Company which demonstrates that as at 19/08/2020, the directors of the Plaintiff Company were Hellen Adhiambo Oburu and Nickitar Akinyi Omondi.

29. While perusing the file, I have noted that indeed even in the Replying Affidavit filed by the Plaintiff in opposition to this Application, the deponent contended that he is the Director of the Plaintiff duly authorized by other officials and therefore competent to swear the affidavit.

30. In brief, what the Defendants are saying is that this suit, which has been brought by a director at the Plaintiff Company, had no locus to file the suit because the director was not a director/shareholder at the Plaintiff's company at the time of filing this suit on 8/05/2019.

31. In the case of Alfred Njau –Vs- City Council of Nairobi [1983] KLR 625 the Court of Appeal, held inter alia that

> " ...Locus standi" literally means a place of standing and refers to the right to appear or be heard in Court or other proceedings and to say that a person has no locus standi means that he has no right to appear or be heard in such and such a proceeding".

32. In the case of Julian Adoyo Ongunga –vs- Francis Kiberenge Abano Migori Civil Appeal No.119 of 2015, Justice A. Mrima had this to say on the issue of a party filing a suit without having obtained a limited grant.

> " Further, the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction. Since it all amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties."

33. I chose to bring this up as this issue is of paramount importance to the case. I do find that the instant suit was brought by a director of the Plaintiff company. The director verified both the Plaint dated 8/05/2019 and the Amended Plaint dated 27/09/2019 deponing that he is a director of the Plaintiff Company and duly authorized to verify the affidavit on behalf of the Plaintiff. The Defendants deponed that the said Hezbon Omondi was not a director/shareholder by the time the suit was instituted. Does this warrant the striking out of pleadings? My answer to this is in the negative.

34. I believe this is an issue of evidence and not an issue of law. Where evidence was produced to demonstrate that a person was unauthorized, such as was the case in this matter, the burden shifted to such officer to demonstrate that they were authorized under the company seal. This requires production and interrogation of evidence and therefore I believe this issue should not be used as a procedural technicality to warrant the striking out of this suit at this juncture, particularly where the deponent in the Plaintiff's case has not been given the opportunity to produce evidence to demonstrate that he is an authorized officer and interrogate the Defendants' evidence. It would therefore not be in the interests of justice to dismiss this suit. A party ought to also be permitted to correct a misstep in the procedure adopted in the institution of the suit when no prejudice and/or injustice is occasioned to the opposing party.

Whether the Plaintiff's suit should be struck out.__

35. Order 2 Rule 15 of the Civil Procedure Rules states as follows;

> "(1) At any stage of the proceedings the Court may order to be struck out or amended any pleading on the ground that-
>
> (a) it discloses no reasonable cause of action or defence in law; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under sub rule (1) (a) but the application shall state concisely the grounds on which it is made.

(3) So far as applicable this rule shall apply to an originating summons and a petition."

36. The Defendants argue that the Plaintiff filed a suit concerning two parcels of land, LR No. 209/10638 and House No. 7, ROYAL PARADISE ESTATE. They assert that the Plaintiff's claims are inaccurate, citing a Sale Agreement for LR No. 209/10638 where the Plaintiff received Kshs. 30,000,000, not Kshs. 50,000,000 as claimed. The Defendants maintain they fulfilled payment obligations, and LR No. 209/10638 was duly transferred to them. Additionally, they refute claims regarding the transfer of ownership of House No. 7, citing a tenancy agreement with Hezbon Omondi. The Defendants assert the Plaintiff has occupied House No. 7 without paying rent, totalling Kshs. 14,640,000. They request the court to strike out the suit against them, arguing it lacks merit and causes them substantial loss.

37. On the other hand, the Plaintiff claims ownership of LR No. 209/10638 at all material times to this suit and that the 1st Defendant was the registered owner of all that piece of land known as L.R No.209/18292 I.R. 109923. The Plaintiff asserts that they entered into a sale agreement with the 1st Defendant in 2013 for Kshs. 50,000,000, under which they sold to the 2nd Defendant all that piece of land known as L.R.No.209/10638 I.R, 48328/1. That the 2nd Defendant paid to the Plaintiff Kshs.30, 000.00 and offered to transfer ownership of all that piece of land known as I.R No.209/18298 1.R. 109923 to the Plaintiff to defray the purchase price balance of Kshs.20, 000, 000.00 due under the sale and purchase of all that piece of land known as L.R.No.209/10638 I.R. 48328/1 which offer the Plaintiff accepted and took possession of the suit property thereto and has been occupation since then. On consideration of the said offer, the Plaintiff contends that they and the 2nd Defendant executed a transfer instrument on the sale and purchase of all that piece of land known as L.R.No.209/10638 I.R. 48328/1, lodged at the Land Registry and a successful registration of transfer was done in favour of the 2nd Defendant for a consideration of Kshs.50, 000, 000.00. The Plaintiff also disputes the existence of a tenancy agreement. The Plaintiff alleges forgery of purported tenancy agreements provided by the Defendants. The Plaintiff seeks specific performance and opposes the Defendant's motion to dismiss. They argue that the Court should determine the sale price and the existence of a tenancy agreement after evaluating evidence. The Plaintiff believes the Defendant's motion lacks merit and should be dismissed with costs.

38. The power to strike out suits is vested in the Court by Order 2 Rule 15. The Court retains the discretion to strike out a plaint if it discloses no cause of action and to strike out a defence if it discloses no reasonable defence or to order their amendment.

39. A cause of action is defined in Black's Law Dictionary 9th Edition at Page 251 as;

> " a group of operative facts which giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person".

40. Pearson J in Drummond Jackson – Vs – Britain Medical Association (1970)2 WLR 688 at page 616 defined a cause of action as:

> " A cause of action is an act on the part of the Defendant, which gives the Plaintiff his cause of complaint. Therefore, what the Plaintiff needed to show was that he had a prima facie case against the Defendants....."

41. It is evident that the Plaintiff and Defendants are in disagreement over several key points in this case, primarily concerning ownership and agreements made. Both parties acknowledge that the suit revolves around ownership matters. However, they differ on the specifics. The Plaintiff claims a sale agreement with the 1st Defendant dated 10/05/2013, while the Defendants assert it was on 11/05/2011. Furthermore, there's a disparity in the purchase price; the Plaintiff states Kshs. 50 million, while the Defendants argue it was Kshs. 30 million. Additionally, the Plaintiff alleges an agreement for possession of House No. 7 and a go-down, which the Defendants dispute. The Defendants deny any agreement for the transfer of possession and ownership of LR No. 209/18298 to the Plaintiff. They also refute any agreement regarding the transfer of one of the go-downs upon construction. Lastly, the Defendants claim a tenancy agreement with the Plaintiff dated 27/12/2011, whereas the Plaintiff denies being a tenant and asserts occupancy without paying rent for over a decade.

42. It is now settled that striking out is a drastic remedy and it has been held that striking out procedure can be invoked only in plain and obvious cases and such discretion should be exercised with extreme caution. In the case of D T Dobie K Limited Vs Muchina (1982) KLR Justice Madan stated that if such a suit shows a semblance of a cause of action provided it can be injected with life through amendments, it ought to be allowed to go forward for a Court of justice ought not to act in darkness without the full facts of a case before it.

43. In the case of Yaya Towers Limited v Trade Bank Limited (In Liquidation) [2000] eKLR, the Court stated as follows:

> " A plaintiff is entitled to pursue a claim in our Courts however implausible and however improbable his chances of success. Unless the defendant can demonstrate shortly and conclusively that the plaintiff's claim is bound to fail or is otherwise objectionable as an abuse of the process of the court, it must be allowed to proceed to trial. In Lawrence v Lord Norreys (1890) 15 App Cas 210 at 219, Lord Herschell said: -
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> > "It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the court. It is a jurisdiction which ought to be sparingly exercised, and only in very exceptional cases. I do not think its exercise would be justified merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved."
>
> If the defendant assumes the heavy burden of demonstrating the claim is bound to fail, he will not be allowed to conduct a mini-trial upon the affidavits. As Danckwerts, LJ, said in Wenlock v Moloney [1965] 1 WLR 1238 at 1244: -
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> > ".... this summary jurisdiction of the court was never intended to be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action. To do that, is to usurp the position of the trial judge, and to produce the trial of the case in chambers, on affidavits only, without discovery and without oral evidence tested

> by cross-examination in the ordinary way. This seems to me to be an abuse of the inherent powers of the court and not a proper exercise of that power."…. I would add that the object of the summary procedure of striking out is to ensure that defendants should not be troubled by claims against them which are bound to fail having regard to the uncontested facts."

44. Based on the foregoing and without going into the merits of the case that forms the substratum of the Plaintiff's and Defendants' affidavits and submissions, I find that the Amended Plaint discloses a reasonable cause of action.

Whether the Court can direct the Plaintiff to deposit monthly rent to this Court pending the determination of the suit.

45. The Defendants claim a tenancy agreement with the Plaintiff dated 27/12/2011, whereas the Plaintiff denies being a tenant and asserts occupancy without paying rent for over a decade. The Plaintiff asserted that for the avoidance of doubt the Plaintiff's Director Mr. Hezbon Omondi has never had any landlord- tenant relationship ever with the Defendants or even a semblance of such sort of relationship whether in the capacity of Directorship of the Plaintiff or even in his personal capacity and any evidence suggesting otherwise is out rightly forgery intentionally being perpetrated by the Defendants to mislead this Honourable Court.

46. This issue of rent/tenancy relationship is highly contested. I agree with the Plaintiff that the Court needs to determine after hearing the parties and evaluating the evidence on record whether the Plaintiff's Director has been or is tenant to the 2nd Defendant noting that the Plaintiff alleges forgery of purported tenancy agreements provided by the Defendants. Having considered the Application, the replying affidavit and the submissions of Plaintiff's counsel, I am not convinced to grant prayer 4 as prayed at this interlocutory stage.

47. In the end, it is my finding that the 1st and 2nd Defendants' Applications dated 7/02/2024 is devoid of merit and is hereby dismissed with costs.

Disposal orders

48. In a synopsis, the following are the orders granted by this Court in relation to the two applications: -

    i. The Plaintiff's Application dated 5/02/2024 is allowed in the following terms: -

        a. The Plaintiff's Application dated 5/02/2024 succeeds in terms of prayer 4. The Court issues an order for status quo to be maintained on the suit properties meaning there shall be no interference with the Plaintiff's quiet possession of all that parcel of land known as LR No. 209/10638 IR 483328/1 & LR No. 209/18298 IR 109923 until this suit is heard and determined.

        b. That there shall be maintained peace and tranquility by all the parties and their agents at the suit properties at all times during the pendency of this suit until it is heard and determined.

        c. Costs shall be in the cause.

    ii. The 1st and 2nd Defendants' Application dated 7/02/2024 is devoid of merit and is hereby dismissed with costs.

    iii. Parties are directed to comply with order 11 of the Civil Procedure Rules with a view to setting down the suit for hearing expeditiously.

iv. Mention for Plea trial conference before the Deputy Registrar on 28/05/2024

49. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF MAY 2024.

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MOGENI J

JUDGE

In the presence of:

Mr. Havi with Mr. Ogutu for Plaintiff

Ms. Opiata with Mr. Wanyaga for 1st & 2nd Defendants

Caroline Sagina: Court Assistant

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MOGENI J

JUDGE