



**IN THE COURT OF APPEAL IN NAIROBI**

**CORAM: MURGOR J.A. (IN CHAMBERS) CIVIL APPLICATION NAI. NO. 224 OF 2014**

**BETWEEN**

**VILLA CARE MANAGEMENT LTD.....APPLICANT AND**

**GEORGE NDUATI MUNENE.....RESPONDENT**

(Being an application for an injunction pending the hearing and determination of the intended appeal from the Ruling and Order of Onyancha J delivered on 26th May 2014

in

H.C.C. APPL No 29 of 2013)

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**R U L I N G**

On the 28th August 2014, I declined to certify this matter as urgent having decided that no urgent circumstances were apparent to warrant the issuance of a certificate of urgency.

Briefly the facts of the case are that Easthaven Development

Company Limited developed twenty seven (27) houses on LR No.

4857/121 Nairobi. Six (6) of the houses were sold to the respondent, six (6) to Mentor Group Ltd, and fifteen (15) separate to individuals. Brooklyn Springs Management Ltd, owned by all

the house owners was to manage all the houses and to provide water, electricity, and undertake cleaning services amongst other services. Mentor Group Limited, one of the owners, went ahead to appoint Villa Care Management Ltd, the applicant, to manage all the twenty seven houses. The respondent has objected to the provision of the management services by the applicant for reasons that the applicant has persisted in charging exorbitant management and service charge fees, including over charging the house owners for water and electricity. As a consequence, he sought court intervention to restrain the applicant from continuing to provide these services.

The applicant, on the other hand contends that their services were initially provided with the consent of the respondent, and in any event, the majority of the house owners did not have any objection to the applicant providing the services.

In a Notice of Motion dated 8th February 2012 the respondent sought injunctive orders restraining the applicant and its servants or agents from managing or providing services to, and in any way interfering with the applicant's six houses out of the twenty seven

houses on LR No. 4857/121 Nairobi, pending the hearing and determination of the suit.

In a Ruling delivered on 26th May 2014 Onyancha J, found that the respondent had established a prima facie case to prevent the applicant from continued provision of the services, and in so doing, granted the injunction sought in relation to the respondent's six houses.

Being dissatisfied with the decision of the High Court the applicant filed a Notice of Appeal to this Court on 10th June 2014, and on 27th August 2014 filed a Notice of Motion together with an supporting affidavit sworn by **Daniel Ojjo**, seeking an injunction to restrain the respondent, their servants and agent or otherwise from executing the Order of the High Court of 26th May 2014 pending the hearing and determination of this application, against the Ruling and Order.

Attached to the Notice of Motion was a Certificate of Urgency dated 27th August 2014 supported by the sworn affidavit of **Ndolo Felix Onyango**. This was the application that I declined to certify as urgent. In the urgency certificate the applicant contended that

in granting the injunction in respect of the six houses, the High Court did not take into account the payment for services in respect of the common areas of the property, where the applicant is mandated to provide the services, and for which the respondent has refused to make payment, thus occasioning loss and harm to the applicant.

The application was referred back to me under **rule 55** of this Court's rules for hearing inter partes. Learned counsel for the applicant, **Mr. N. F. Onyango** submitted that following the issuance of the injunction the respondent had interpreted this to mean that he was not liable for payment of any of the service charges, including the services for the common areas, which had resulted in the unpaid sum of Kshs. 1,000,000. Counsel submitted that this amount was to facilitate the continued provision of services to all the housing units, and unless paid, the quality of services to the other home owners would be compromised. When pressed by the court for the reason or reasons for urgency, Mr. Onyango responded that the continued non-payment of the service charges by the respondent was affecting the applicant's ability to perform the services.

**Mr. Makumi**, learned counsel for the respondent, in his rejoinder contended that according to the Joint Venture agreement between the parties, Brooklyn Springs Management Ltd was to provide the management services, and not the applicant. In his view, the applicant had not specified any reasons for having the application certified as urgent.

Having considered the pleadings and heard the rival submissions of counsel, I remain unable to see any reason to certify the Notice of Motion as urgent. The applicant states that the application must be heard urgently because it is incurring losses for services that it is providing to the respondent, and for which the respondent has refused to pay. The applicant has not shown how the non-payment has affected its ability to carry out the services, or that the non-payment has in effect brought its business to a standstill or, has given rise to a precarious or prejudicial state of affairs within the company. In the circumstances, I decline to alter my decision made on 29th August

2014. The costs of this application for urgency to be in the main application.

**Dated and delivered at Nairobi this 3rd day of OCTOBER,**

**2014.**

**A.K. MURGOR**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**