Mahir Properties Limited v Raas Global Limited & 3 others (Environment & Land Case E434 of 2024) [2024] KEELC 14073 (KLR) (16 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14073 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE E434 OF 2024

JO MBOYA, J

DECEMBER 16, 2024

BETWEEN

MAHIR PROPERTIES LIMITED .... PLAINTIFF

AND

RAAS GLOBAL LIMITED .... 1ST DEFENDANT

ABDIKAFI NOOR SHEIKH .... 2ND DEFENDANT

ABDI ALI .... 3RD DEFENDANT

DAHIR OSMAN .... 4TH DEFENDANT

RULING

1. The Plaintiff/Applicant has approached the honourable court vide Notice of Motion Application dated the 22nd October 2024 brought pursuant to the provisions of Sections 1A, 1B, 3A and 63 (e) of the Civll Procedure Act: Order 40 Rules 1, 2. 3, 4 9. and 51 of the Civil Procedure Rules; sections 43 & 44 of the *Land Act*, 2012; Sections 36 (1) and (2) and 68(1) and 69 of the *Land Registration Act*, 2012; and in respect of which same has sought for the following reliefs;

    i. That this Application be certified extremely urgent and service thereof be dispensed with in the first instance:

    ii. That the Honourable Court be pleased to issue an interim order of injunction restraining the Defendants/Respondents. Principals, Agents, or employees and any other person acting on their behalf from transferring, selling. disposing off, alienating. pledging. subdividing, disturbing, wasting, or in way interfering and/or continuing any construction works or development on Nalrobl/ Block 34/518 [formerly known as property Land Reference Number 209/89/20] pending the hearing and determination of this Application,

iii. That this Honourable Court be pleased to issue temporary order of injunction restraining the Defendants/Respondents, Principals. Agents, or employees and any other person acting on their behalf from transferring, selling, disposing off. alienating. pledging, subdividing, disturbing, wasting or in any way interfering and/or continuing any construction works or development on Nairobi/ Block 34/518 (formerly known as property Land Reference Number 209/89/20) pending the hearing and determination of this suit.

iv. That the Honourable Court be pleased to grant an order of inhibition inhibiting any dealings on property Nairobi/ Block 34/518 (formerly known as property Land Reference Number 209/89/20) either by way of sale, transfer, lease, charge or otherwise pending the hearing and determination of this application.

v. That the Honourable Court be pleased to grant an order of inhibition inhibiting any dealings on property Nairobl/ Block 34/518 [formerly known as property Land Reference Number 209/89/20] either by way of sale, transfer, lease, charge or otherwise pending the hearing and determination of this suit.

vi. That an Order be issued directing the OCPD Parklands Police Station to enforce/ ensure compliance with orders of this Honourable Court.

vii. The Honourable Court be pleased to issue further and/or directions which shall meet the ends of justice

viii. That the cost of this Application be borne by the Respondent.

2. The instant application is premised on various grounds that have been highlighted in the body thereof. Furthermore, the application is supported by the affidavit of Dahir Abdulselan Sworn on even date and to which the deponent has annexed six [6] documents including a copy of the joint venture agreement entered into on the 2nd June 2023.

3. Upon being served with the subject application, the Defendants/Respondent filed a notice of preliminary objection dated the 12th November 2024 and a replying affidavit sworn by Abdi Kafinur Sheik on the 14th November 2024. Suffice it to state that the replying affidavit is indicated to have been sworn for and on behalf of all the Defendants/Respondents.

4. The instant application came for hearing on the 12th November 2024 whereupon the advocates for the respective parties covenanted to canvass and dispose of the application by way of written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.

5. The Plaintiff/Applicant proceeded to and filed written submissions dated the 2nd December 2024 whereas the Defendants/Respondents filed written submissions dated the 2nd December 2024. For coherence the two [2] sets of written submissions form part of the record of the court.

Parties' Submissions

a. Applicant's Submissions:

6. The Applicant filed written submissions dated the 2nd December 2024 and wherein the Applicant has adopted the grounds contained/highlighted in the body of the application In addition, the Applicant has also reiterated the averments contained in the supporting affidavit sworn on the 22nd October 2024.

7. Furthermore, learned counsel for the Applicant has thereafter proceeded to and canvassed four [4] salient issues for consideration by the court. Firstly, learned counsel for the Applicant has submitted that the Applicant and the 1st Defendant/Respondent entered into and executed a joint venture agreement dated the 3rd June 2023. Besides, learned counsel for the Applicant has submitted that the terms of the joint venture agreement were detailed and highlighted in the body of the joint venture agreement.

8. It was the further submissions by learned counsel for the Applicant that pursuant to the terms of the joint venture agreement, the 1st Defendant/Respondent offered the suit property for purposes of the construction of various housing units, which were to be undertaken by the Applicant. Furthermore, it was contended that pursuant to the terms of the joint venture, the Applicant was to be entitled to 75% of the units developed on the suit property, whereas the 1st Defendant was to be entitled to 25% of the units.

9. Arising from the foregoing, learned counsel for the Applicant has submitted that the Applicant herein accrued a stake and/or interests in the suit property and which interests relates to ownership of 75% of the units which were to be constructed thereon.

10. Owing to the fact that the joint venture agreement created a contract between the Applicant herein and the 1st Defendant, learned counsel for the Applicant has submitted that the Applicant has established and demonstrated a prima facie case with probability of success.

11. Secondly, learned counsel for the Applicant has submitted that having entered into and executed the joint venture agreement, the 1st Defendant/Respondent cannot now seek to breach and violate the terms of the joint venture agreement at will. In this regard, learned counsel for the Applicant has submitted that the court has a duty to protect the rights of the innocent party to the contract.

12. In support of the submissions that the 1st Defendant/Respondent cannot be allowed to breach and violate the terms of the joint venture agreement, learned counsel for the Applicant has cited and referenced the provisions of Order 41 Rule[2] of the Civil Procedure Rules, 2010, which cloth the court with powers to restrain the 1st Defendant from breaching and violating the terms of the contract.

13. Thirdly, learned counsel for the Plaintiff/Applicant has submitted that the Plaintiff/Applicant herein accrued a legitimate expectation pertaining to ownership of 75% of the units that were to be contracted. To this end, it has been submitted that the rights attaching to and flowing from the ownership of the said units constitutes an interest to and in respect of the suit property.

14. Additionally, learned counsel for the Applicant has submitted that if the 1st Defendant/Respondent proceeds with the threatened acts, then the Applicant herein shall be disposed to suffer and/or accrue irreparable loss. In this regard, counsel has submitted that the court ought to intervene and avert irreparable loss arising out of the threatened action by the 1st Defendant/Respondent.

15. Fourthly, learned counsel for the Applicant has submitted that even though the Applicant had previously filed another in the chief magistrate's court touching on the same subject matter, the Applicant realized that the magistrates court was divested of pecuniary jurisdiction to entertain and adjudicate upon the dispute. In this regard, learned counsel posited that the Applicant thereafter proceeded to and lodged a notice of withdrawal of the suit that was filed in the chief magistrate's court.

16. Arising from the foregoing, learned counsel for the Applicant has therefore submitted that it is incorrect for the Defendant/Respondent to contend that the instant suit is barred and/or prohibited by the doctrine of res-sub-judice. In any event, learned counsel for the Applicant has submitted that

the suit in the chief magistrate's court stands withdrawn on the basis of the Notice of Withdrawal filed by and on behalf of the Plaintiff herein.

17. On the other hand, learned counsel for the Applicant has also submitted that even assuming that the suit in the chief magistrate's court has not been formally withdrawn, it has been contended that the chief magistrate court was/is not seized of the requisite jurisdiction. In this regard, learned counsel for the Applicant has posited that res-sub-judice would still not apply.

18. Flowing from the foregoing submissions, learned counsel for the Applicant has implored the court to find and hold that the application beforehand is meritorious. In this regard, the court has been invited to grant the reliefs sought at the foot of the application and thereby preserve the suit property pending the hearing and determination of the suit.

b. Respondents' Submissions:

19. The Respondents filed written submissions dated the 2nd December 2024 and wherein the Respondent has highlighted the contents of the replying affidavit sworn on the 14th November 2022 and the annexures thereto. Furthermore, the Respondents have intimated that same shall be retracting the notice of preliminary objection dated the 12th November 2024.

20. Other than the foregoing, learned counsel for the Respondents has highlighted and canvassed four salient issues for consideration by the court. First and foremost, learned counsel for the Respondent has submitted that even though the Applicant and the 1st Respondent entered into and executed a joint venture agreement, the said joint venture agreement was terminated and thus same is no longer in existence.

21. Additionally, learned counsel for the Respondents has submitted that upon the termination of the joint venture agreement herein, the parties entered into negotiations in an endeavour to ascertain the quantum of monies refundable to the Applicant. In any event, it has been contended that the Applicant and the 1st Respondent have since exchanged various correspondence towards ascertaining the quantum of expenses that were incurred by the Applicant.

22. Arising from the foregoing, learned counsel for the Respondent has submitted that the Applicant's suit and claim thereunder is therefore predicated on a joint venture agreement which stand terminated.

23. In addition, it has been contended that the joint venture agreement did not confer unto the Applicant any ownership rights to the suit property. In this regard, learned counsel for the Respondents has posited that the Applicant herein cannot now be heard to stake and/or claim an interests in respect of the suit property.

24. Secondly, learned counsel for the Respondents has submitted that the Applicant's remedy for breach of the joint venture agreement, if any, is in damages. In this regard, it has been contended that the Applicant can only stake a claim to damages for breach of contract and which damages are not only quantifiable but also payable in monetary terms.

25. To this extent, learned counsel for the Respondents has submitted that insofar as the Applicants loss, if any, is quantifiable and thus payable, the Applicant has failed to demonstrate the likelihood of irreparable loss arising and/or accruing, if the orders of temporary injunction are not granted.

26. Further and at any rate, learned counsel for the Respondents has submitted that where damages will suffice to satisfy the loss if any to be suffered by the Applicant, an order of temporary injunction ought not to be granted. In this regard, learned counsel has contended that irreparable loss forms a critical ingredient/pillar in determining whether or not to grant an order of temporary injunction.

27. Thirdly, learned counsel for the Respondents has submitted that the Applicant herein is merely keen to frustrate the Respondents from proceeding with and undertaking development on the suit property. In particular, it has been contended that the grant of an order of temporary injunction would operate to frustrate the rights of the 1st Respondent.

28. Finally, learned counsel for the Respondents has submitted that the Applicant and the 1st Defendant entered into the joint venture agreement [contract freely]. Furthermore, it has been submitted that subsequently, the joint venture agreement was terminated. In this regard, learned counsel has therefore invited the court to find and hold that upon the termination of the joint venture agreement, there is no more contract in existence.

29. In any event, it has been contended that insofar as the contract between the Plaintiff and the 1st Respondent has since been terminated, the court herein is devoid/divested of jurisdiction to compel the parties to continue acting in accordance with the terms of the terminated contract. In particular, it has been contended that the court has no jurisdiction to re-write a contract between the parties.

30. Arising from the foregoing submissions, learned counsel for the Respondent has inviting the court to find and hold that the Applicant herein has failed to establish and demonstrate the requisite ingredients that underpin the grant of temporary injunction. In particular, it has been contended that the Applicant has not demonstrated the existence of a prima facie case with probability of success.

31. In a nutshell and for the foregoing reasons, the court has been invited to find and hold that the application beforehand is devoid of merits and thus ought to be dismissed with costs.

Issues for Determination:

32. Having reviewed the Notice of motion application and the response thereto and upon consideration of the written submissions filed on behalf of the respective parties, the following issues do emerge [crystalise] and are thus worthy of determination;

    i. Whether the Applicant has established and demonstrated the existence of a prima facie case with probability of success.

    ii. Whether the Applicant herein shall be disposed to suffer irreparable loss if the orders of injunction sought are not granted or otherwise.

    iii. What orders/reliefs, if any ought to be granted.

Analysis And Determination

Issue Number 1

Whether the Applicant has established and demonstrated the existence of a prima facie case with probability of success.

33. It is common ground that the 1st Defendant/Respondent is the registered owner of Plot Number Nairobi/Block 34/518 [formerly known as L.R No. 209/89/20]. Furthermore, there is no gainsaying that the Applicant and the 1st Defendant entered into and executed a joint venture agreement wherein the 1st Defendant/Respondent undertook to offer the suit property for purposes of construction/ development of a housing project.

34. On the other hand, it is worthy to point out that the joint venture agreement which was entered into and executed on the 3rd June 2023 contained various terms which were agreed upon. Notably, the

Applicant and the 1st Defendant/Respondent covenanted that the Applicant was to undertake the construction of the housing project on the suit property and thereafter the Applicant was to accrue ownership in respect of 75% of the units. [See clause 4.1.1 of the joint venture agreement].

35. From the terms and conditions [details whereof have been highlighted vide clause 4.1.1 of the joint venture agreement], it is apparent that the Applicant herein was to accrue an interest to and in respect of the suit property. For coherence, the Applicant's interests to the suit property was comprising of 75% of the developed units.

36. Suffice it to state that the Applicant herein contends that the joint venture agreement is still in existence and hence the terms/conditions thereof are binding on the parties. To this end, the Applicant implores the court to find and hold that the 1st Defendant/Respondent ought not to be allowed to breach and violate the terms of the joint venture.

37. Additionally, the Applicant contends that despite the existence of the joint venture agreement, the 1st Defendant/Respondent has committed acts of breach. In addition, it has been contended that the 1st Defendant/Respondent has entered into an agreements with the 3rd and 4th Defendants and hence there is a likelihood that the Applicant shall be deprived of its rights/entitlements under the joint venture agreement.

38. On the other hand, the 1st Defendant/Respondent has contended that the joint venture agreement which was entered into and executed on the 3rd June 2023 has since been terminated. Furthermore, the 1st Respondent has posited that upon the termination of the joint venture agreement, the parties herein have since exchanged various correspondence in an endeavour to ascertain the quantum of expenses that were incurred by the Applicant.

39. Simply put, the 1st Respondent has contended that the joint venture agreement which is being invoked by the Applicant herein stand[s] terminated and is thus non-existent. To this end, it has been contended that the Applicant's claim is therefore predicated on a contract that has since been terminated.

40. From the rival submissions, [details highlighted in the preceding paragraphs], what comes to the fore is to the effect that the Applicant and the 1st Defendant/Respondent are not in agreement as to whether or not the joint venture agreement has been terminated or otherwise.

41. Be that as it may, it is not lost on the court that at this interlocutory stage the court is not called upon to make firm and precipitate finding[s] of fact and law. To the contrary, the court is obligated to discern on a prima facie basis, whether the Applicant has established prima facie issues that can attract due investigation and interrogation by the court during a plenary hearing.

42. To this end, it suffices to cite and reference the holding in the case of Mbuthia v Jimba Credit Finance Corporation & another (1988) eKLR where the court stated thus;

> " The correct approach in dealing with an application for the injunction is not to decide the issues of fact, but rather to weigh up the relevant strength of each side's propositions. There is no doubt in my mind that the learned Judge went far beyond his proper duties, and has made final findings of fact on disputed affidavits."

43. To my mind, I find and hold that the Applicant herein has indeed demonstrated that same [Applicant] and the 1st Respondent entered into and executed a joint venture agreement dated the 3rd June 2023. Furthermore, the Applicant has also demonstrated on a prima facie basis that the 1st Respondent has committed the acts of breach, which are intended to negate the fulfilment of the joint venture agreement.

44. Simply put, the averments which underpin the Application by and on behalf of the Applicant herein establish and demonstrate what constitutes a prima facie case with probability of success.

45. As pertains to what constitute a prima facie case, it is instructive to recall and reiterate the definition supplied vide Mrao Ltd v First American Bank of Kenya Ltd & 2 others (Civil Appeal 39 of 2002) [2003] KECA 175 (KLR) (7 March 2003) (Judgment), where the Court of Appeal highlighted the meaning of a prima facie case.

46. For good measure, the court stated thus:

    4. A prima facie case in a civil application includes but is not confined to a "genuine and arguable case." It is a case 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.

47. The meaning and import of what constitutes a prima facie case was re-visited by the Court of Appeal in the case of Nguruman Limited v Jan Bonde Nielson and Others [2014] eklr.

48. For ease of appreciation, the honourable Court of Appeal stated as hereunder;

> " Prima facie" is a Latin phrase for "at first sight", whose legal meaning and application has been the subject of varying interpretation by courts in many jurisdictions. Phrases like "a serious question to be tried", "a question which is not vexatious or frivolous", "an arguable case" have been adopted to describe the burden imposed on the applicant to demonstrate the existence of prima facie case. The leading English House of Lords case of the American Cyanamid Co. Ethicon Ltd [1975] AC 396 is a case in point. The meaning of "prima facie case", in our view, should not be too much stretched to land in the loss of real purpose. The standard of prima facie case has been applied in this jurisdiction for over 55 years, at least in criminal cases, since the decision in Ramanlal Trambaklal Hatt V. Republic [1957] E.A. 332.
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> Recently, this court in Mrao Ltd. V. First American Bank of Kenya Ltd & 2 others [2003] KLR 125 fashioned a definition for "prima facie case" in civil cases in the following words:
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> > "In civil cases, a prima facie case 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 to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case.
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> It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."
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> We adopt that definition save to add the following conditions by way of explaining it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion.
>
> 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.

49. Without belabouring the point, it is my humble finding and holding that the factual matrix, which has been propagated by the Plaintiff/Applicant establishes a prima facie case with probability of success. Nevertheless, as to whether or not the Applicants claim will succeed at the tail end, is a different issue to be determined and adjudicated upon by the trial court and not otherwise.

Issue Number 2

Whether the Applicant herein shall be disposed to suffer irreparable loss if the orders of injunction sought are not granted or otherwise.

50. Having evaluated the question of a prima facie case, it is imperative to underscore that upon discerning and ascertaining that an Applicant has demonstrated a prima facie case, then it behoves the Applicant to venture forward and demonstrate a likelihood of irreparable loss arising.

51. Suffice it to posit that whereas proof of a prima facie case is a precursor/prelude to procuring an order of temporary injunction, the demonstration of irreparable loss is the cornerstone [key pillar] upon which an order of temporary injunction is issued. Instructively, where an Applicant is unable to demonstrate irreparable loss then no order of temporary injunction can issue.

52. To underscore, the foregoing exposition of the law, it suffices to cite and reference the holding in the case of Kenya Commercial Finance Co. Ltd V. Afraha Education Society [2001] Vol. 1 EA 86, where the court of appeal stated and held as hereunder;

> If the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage.
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> If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit "leap-frogging" by the applicant to injunction directly without crossing the other hurdles in between.

53. From the foregoing excerpt, there is no gainsaying that it is pertinent for the Applicant herein to establish and demonstrate that same [Applicant] shall be disposed to suffer irreparable loss. To this end, I shall now turn to interrogate the aspect relating to the nature of injury, if any, that the Applicant shall be disposed to suffer.

54. To start with, the Applicant and the 1st Respondent entered into and executed the joint venture under reference. Furthermore, the Applicant and the 1st Respondent agreed on a pro-rata sharing ratio. In this regard, the Applicant was to be entitled to 75% of the units to be developed on the suit property whereas the 1st Respondent was entitled to 25% of the units developed.

55. Suffice it to state that the units in question were to be constructed/developed on the suit property that is owned by the 1st Respondent. In this regard, there is no gainsaying that if the suit property is alienated and or contracted to and in favour of the 3rd and 4th Defendants/Respondents, then automatically, the proposed project envisaged by the joint venture agreement shall abort.

56. Furthermore, in the event of the said suit property being alienated and or contracted to the 3rd and 4th Defendants, it is evident that the Applicant's entitlement to the 75% of the units would stand defeated.

57. Though the 1st Respondent contends that the Applicant's entitlement is capable of being quantified and thus payable, there is no gainsaying that the returns that would be derivable from the 75% of the units, have neither been adverted to nor highlighted.

58. In my humble view, the loss that the Applicant shall be disposed to suffer flows from the benefit that would accrue from the 75% ownership. In this regard, I am not convinced that the nature of loss/injury to be suffered by the Applicant is quantifiable in the manner propagated by the learned counsel for the Respondents.

59. On the contrary, I come to the conclusion that the Applicant herein has demonstrated and proved that same [Applicant] shall be exposed to suffer irreparable loss.

60. What constitutes and/or amounts to irreparable loss was elaborated by the Court of Appeal in the case of Vivo Energy Kenya Limited v Maloba Petrol Station Limited & 3 others [2015] eKLR, where the Court of Appeal stated and held thus

> " On the second factor, that the applicant must establish that he "might otherwise" suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant.
>
> The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot "adequately" be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy."

61. In a nutshell, my answer to issue number two [2] is to the effect that the Applicant herein has been able to lay before the court evidence to demonstrate that same [Applicant] shall be disposed to suffer irreparable loss unless the orders of injunction are granted.

Issue Number 3

What orders/reliefs, if any ought to be granted.

62. Having come to the conclusion that the Applicant herein has established the existence of a prima facie case with a probability of success and having also found that the Applicant has proved the likelihood of irreparable loss arising, the question that does arise relates to the nature of orders that the court ought to grant.

63. To start with, the Applicant herein has sought for various of orders of temporary injunction directed towards restraining the Defendants from alienating, disposing of and/or undertaking any developments on the suit property.

64. Pertinently, the court is inclined to grant the orders of temporary injunction. Nevertheless, it is not lost on the court that an Applicant who benefits from an order of temporary injunction is obligated to furnish the court with an appropriate undertaking to pay damages in the event that it turns out that the injunction was granted without lawful basis.

65. To this end, it suffices to cite and reference, the provisions of Order 40 Rule 2 of the Civil Procedure Rules,2010.

66. The said provisions [supra] stipulate as hereunder;

> In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.
>
> (2) The court may by order grant such injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the court deems fit.

67. Notably, the crux of the Applicants claim before the court is that the 1st Defendant/Respondent is breaching the terms of the joint venture agreement. It is the complaints that touching on the breach/ violation of the joint venture agreement that underpin the grant of the orders of temporary injunction herein. In this regard, the provisions of Order 40 Rule 2 of the Civil Procedure Rules mandate the court to decree the provision of an undertaking as to damages.

68. Arising from the foregoing, it is my finding that the obtaining circumstances necessitate an order that the Plaintiff/Applicant herein shall file a suitable undertaking as to damages for the sum of Kes.20, 000, 000/= only. The undertaking for the damages shall be filed with the Deputy Registrar of the Court within 30 days subject to the provision of Order 50 of the Civil Procedure Rules.

Final Disposition:

69. Flowing from the foregoing analysis, [details highlighted in the body of the Ruling] it must have become crystal clear that the Applicant herein has indeed established a basis to warrant the grant of orders of temporary injunction in the manner sought at the foot of the notice of motion application under reference.

70. In the premises, the final orders that commend themselves to the court are as hereunder;

    a. The Application dated the 22nd October 2024 be and is hereby allowed in the following terms;

        i. There be and is hereby granted an order of temporary injunction restraining the Defendants/Respondents, Principals. Agents, or employees and any other person acting on their behalf from transferring, selling, disposing off. alienating. pledging, subdividing, disturbing, wasting or in any way interfering and/or continuing any construction works or development on Nairobi/ Block 34/518 [formerly known as property Land Reference Number 209/89/2] pending the hearing and determination of this suit.

        ii. There be and is hereby issued an order of inhibition inhibiting any dealings on property Nairobi/ Block 34/518 [formerly known as property Land Reference Number 209/89/20] either by way of sale, transfer, lease, charge or otherwise pending the hearing and determination of this suit.

        iii. The Plaintiff/Applicant shall execute and file a suitable undertaking as to damages for the sum of Kes.20, 000, 000/= Only. The undertaking as to damages shall be filed with

the court within 30 days [subject to the provisions of Order 50 of the Civil Procedure Rules 2010.]

iv. In default to file a suitable undertaking in terms of clause [iii] herein, the orders of temporary injunction shall lapse automatically and without recourse to court.

v. Costs of the application shall abide the outcome of the suit.

71. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF DECEMBER 2024

OGUTTU MBOYA,

JUDGE.

In the presence of:

Benson/Hilda Court Assistant.

Ms. Maria Nyangayo for the Plaintiff/Applicant.

Mr. Ochieng for the Defendants/Respondents.