



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**CASE NO. 37 OF 2015**

**MARTIN NGOMAT:.....PLAINTIFF**

**VERSUS**

**DINAH JEPKEMBOI BARTILOL:.....DEFENDANT**

**RULING**

1. The defendant/applicant brought a notice of motion dated 13.2.2015 in which she seeks to have the plaintiff/Respondent's suit struck out. The application is expressed to be brought under the provisions of order 2 Rule 15 1(a) (b) (c) and (d) of the Civil procedure Rules. The applicant contends that the respondent is seeking to have judgement based on an agreement dated 7.3.2015 which agreement she contends is null and void and that in any case, the agreement of 7.3.2015 cannot be used to amend or vary the one of 27.12.2005. It is on this ground that the applicant contends that the respondent's suit does not disclose a reasonable cause of action against her and hence is scandalous and frivolous.

2. The respondent has opposed the applicant's application based on a replying affidavit sworn on 27.10.2015. The respondent contends that the application is incompetent and ought to be dismissed. He contends that his suit raises triable issues which should be heard in a full trial. He further contends that if the applicant wanted to rely on order 2 Rule 15 1(a), then he should not have provided evidence.

3. The respondent further argues that he had entered into a valid agreement on 27.12.2005 with the applicant and therefore his suit should not be struck out as pleaded.

4. I have considered the applicant's application as well as the opposition to the same by the respondent as well as the submissions by counsel for the parties. Order 2Rule 15 1(a) does not allow a party bringing an application under that rule to adduce any evidence. The party is only supposed to state concisely the grounds on which it is made. The applicant cannot therefore be heard to argue that the respondent's suit does not disclose a reasonable cause of action. The only issue for determination is whether the respondent's suit is scandalous, frivolous, vexatious or is an abuse of the process of court.

5. The applicant is claiming that the respondent is basing his claim on the agreement of 7.3.2015. That agreement is said to have been annexed to the supporting affidavit and marked "DJB 1". A look of the annexature marked "DJB 1" shows that it is a letter from the applicant's former lawyers which was written on 27.8.2014. The agreement of 7.3.2015 is therefore not annexed and there is no way the court can make any finding on what is not placed before it.

6. There is an agreement dated 27.12.2005. The agreement clearly shows that it was signed by both the applicant and the respondent. This agreement is not being denied. It has been exhibited by both parties in-their supporting affidavits. Prima facie, this agreement shows that there was sale of land by the applicant to the respondent. Even the letter of 27.8.2014 reveals as much. Whether this agreement was later varied or not is a question which can only be determined at the hearing of the suit. The plaintiff/Respondent's suit is neither frivolous nor an abuse of the process of court. It cannot be struck out at this stage. I therefore find that applicant's application lacks merit. The same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 21st day of January,2016.

**E. OBAGA**

**JUDGE**

In the presence of Mr. Analo for Mr. Kraido for applicant and Mr. Okara for Mr. Barongo for respondent.

Court Assistant - Isabellah.

**E. OBAGA**

**JUDGE**