



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT KAJIADO

CIVIL CASE NO. 47 OF 2018

HUSSEIN ZADEH TAGHI.....PLAINTIFF/RESPONDENT

-VERSUS-

MIRDIF INVESTMENTS LIMITED.....1ST DEFENDANT/APPLICANT

HEZRON OSELE OTIENO.....2ND DEFENDANT/APPLICANT

MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT.....3RD DEFENDANT

THE COUNTY GOVERNMENT OF KAJIADO.....4TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....5TH DEFENDANT

AND

ESTATE OF THE LATE SAMUEL NJOROGE (deceased).....THIRD PARTY

RULING

This ruling is on the application dated 23/4/2021. The application which is by the first and second Defendants is brought under **Sections 1A, 1B and 3A** of the **Civil Procedure Act Orders 1 Rule 3** and **2 Rule 15** of the **Civil Procedure Rules**.

The application seeks several orders namely;

1. Striking out the suit against the first and second defendants.
2. Summary judgment against the Plaintiff and the third party in form of injunction, eviction, rectification of the Land Register, general damages, aggravated damages, costs of the suit and interest.

The grounds for seeking the orders are that the Plaintiff has now amended the plaint and joined the person who sold him the land, the surveyor, the director of Surveys and other necessary parties.

The applicants feel that since the right parties are now in the suit, there is no need for them to remain as they have no privity of contract with the Plaintiff and the Land Registrar has established that the dispute is outside his purview as it no longer concerns the boundaries between the parcels but it is on ownership to land.

The application is supported by an affidavit sworn by the second Defendant Hezron Osele Otiemo and another one by Swaleh Uledi Kanyeki. They urge that the suit is heavily burdened by parties who have no blame in the claim by the plaintiff and no privity of contract.

They add that the dispute can be determined without their participation and involvement and the suit is scandalous, frivolous and vexatious as against them.

Counsel for the plaintiff filed written submissions on 13/11/2021 and the first and second Defendants on 24/9/2021.

I have carefully considered the application in its entirety including the affidavits, grounds, annexures and case law presented before me. I

find that it is premature to strike out the suit.

One of the prayers sought by the first and second Defendants in the Notice of Motion dated 23/4/2021 is 2 (c), that is to say;

“An order of eviction of the Plaintiff and the Third Party from the parcels of land comprised in title numbers KAJIADO/KAPUTIEI/NORTH/4615 and 4616.”

Can this Court or any other Court for that matter evict a person in occupation before such person has been heard? The obvious answer to that question is NO. Striking out a suit is a draconian move as it derogates the right to a fair hearing enshrined in **Article 50(1)** of the **Constitution**.

A Court of Law should always sustain a suit rather than dismiss it before hearing a party. Since the first and second Defendants can adequately be compensated by an award of costs in case the suit is unsuccessful against them, I find that they should remain in the suit.

For the above reasons, I dismiss the application dated 23/4/2021. Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24TH DAY OF JANUARY, 2022

M.N. GICHERU

JUDGE