

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

E.L.C. NO 8 OF 2014

AUGUSTINE NJERU.....PLAINTIFF

VERSUS

TANA WATER SERVICE BOARD.....1st DEFENDANT

THE ATTORNEY GENERAL.....2nd DEFENDANT

RULING

1. The 2nd defendant by his notice of motion dated 30th September, 2014 has applied to this court to strike out the plaintiff's case against him. The reason for this is that there is no cause of action disclosed against him. Additionally, he has prayed that he be awarded the costs of this motion and that of the entire suit. The application is supported by an affidavit of sworn to by Ms Rose Nyawira.
2. The application is not opposed. All there is in the file is the 1st defendant's statement of defence dated 13th October, 2013.
3. According to the supporting affidavit, the plaintiff does not disclose a cause of action against the 2nd defendant. And for that reason, it is said to be scandalous, frivolous and vexatious and a abuse of the court process. The alleged damage on the 1st defendant's suit land reference number Kyeni/Mufu/5535 is said to have been caused by the 1st defendant's actions.
4. It is alleged in the plaintiff that a water pipe that was installed by the defendant burst and extensively destroyed and eroded 0.5 hectares of the plaintiff's parcel of land. As a result, there was erosion of the suit land and damage to his nappier grass, bananas, arrow roots and other crops.
5. Furthermore, the 2nd defendant in the supporting affidavit has stated that the 1st defendant is a body corporate with power to sue and be sued in its own name. Additionally, the 2nd defendant asserts that no wrong doing has been alleged against the 2nd defendant in the plaintiff. And for that reason, the 2nd defendant prays that the suit be struck out and costs be awarded to him.
6. I have considered the plaintiff together with the defence and the notice of motion. I find that the 1st defendant is a body corporate. I find that it may be sued in its own name. It also has the capacity to sue in its own name.
7. More importantly, the plaintiff does not allege any wrong doing on the part of the 2nd defendant. In these circumstances, I find that the 2nd defendant was wrongly joined as a party to this suit.
8. In the light of the foregoing reasons, I agree with counsel for the 2nd defendant that the plaintiff does not disclose any cause of action against the second defendant.
9. For these reasons, the suit against the 2nd defendant is hereby dismissed with costs of this application and the entire suit to be paid to the second defendant.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **20th** day of **APRIL 2015**.

In the presence of Ms Janet Kungu for the second defendant and in the absence of both the plaintiff and the first defendant

Court clerk Mr Muriithi

J.M. BWONWONGA

JUDGE