



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND COURT**  
**ELC. CASE NO. 214 OF 2011**

**CAROLINE WAITHERA KIRUMBA.....1<sup>ST</sup> PLAINTIFF**  
**MARYANNE WAMAITHA MWAURA.....2<sup>ND</sup> PLAINTIFF**  
**NEXT TECHNOLOGIES LIMITED.....3<sup>RD</sup> PLAINTIFF**  
**SIGIMO ENTERPRISES LIMITED.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**SUSAN NYAMBURA WACIRA.....1<sup>ST</sup> DEFENDANT**  
**KENON COURT MANAGEMENT CO. LTD.....2<sup>ND</sup> DEFENDANT**  
**HOUSING FINANCE COMPANY OF KENYA LTD.....3<sup>RD</sup> DEFENDANT**  
**KENON PLACE LIMITED.....4<sup>TH</sup> DEFENDANT**

**RULING**

Coming up before me for determination is the Notice of Motion dated 13<sup>th</sup> November 2014 in which the 3<sup>rd</sup> Defendant/Applicant seeks for orders that this court be pleased to strike out the Amended Plaint filed in this suit and that the costs of this Application and suit be awarded to them.

The Application is premised on the grounds that the Amended Plaint disclosed no or no reasonable cause of action, no relief is sought by the Plaintiffs against the 3<sup>rd</sup> Defendant and no allegations have been made against the 3<sup>rd</sup> Defendant.

The Application is opposed. The Plaintiffs filed their Grounds of Opposition dated 12<sup>th</sup> February 2015 in which they stated that the Application is bad in law, misconceived and is an abuse of the court process, that the issues raised in this suit cannot be conclusively addressed in the absence of the 3<sup>rd</sup> Defendant/Applicant and hence the need to retain them as parties in this suit upon which ground this

Application ought to be dismissed with costs to the Plaintiff/Respondent.

All the parties herein filed their respective written submissions.

The issue I am called upon to determine is whether or not to strike out the Amended Plaintiff on the grounds that the same does not disclose any cause of action against the 3<sup>rd</sup> Defendant/Applicant. The applicable law is to be found in **Order 2 Rule 15(1)** of the **Civil Procedure Rules, 2010** which states as follows:

**“At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that –**

**(a) It discloses no reasonable cause of action or defence in law; or**

**(b) It is scandalous, frivolous or vexatious; or**

**(c) It may prejudice, embarrass or delay the fair trial of the action;**

**(d) It is otherwise an abuse of the process of the court,**

**And may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”**

The Plaintiffs filed this suit by way of their Amended Plaintiff dated 10<sup>th</sup> September 2014 wherein they seek inter alia, a declaration that the purchase of the Apartments by the Plaintiffs through the 3<sup>rd</sup> Defendant/Applicant was legal and valid. It is asserted that the 3<sup>rd</sup> Defendant sold the Apartments to the Plaintiffs in exercise of their statutory power of sale under the mortgage instrument they held. There is no doubt in my mind that the Amended Plaintiff discloses a reasonable cause of action which this court ought to hear and determine.

Further, **Order 1 Rule 3 of the Civil Procedure Rules, 2010** provides as follows:

**“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where if separate suits were brought against such persons any common question of law or fact would arise.”**

To my mind, there is no doubt that the participation of the 3<sup>rd</sup> Defendant/Applicant in this suit is crucial as the 3<sup>rd</sup> Defendant is the only link between the Plaintiffs and the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants. This court is called upon to scrutinize the transaction in which the Plaintiffs purchased the Apartments from the 3<sup>rd</sup> Defendant when it exercised its statutory power of sale under a mortgage instrument and what rights the Plaintiffs acquired therefrom which they wish to enforce against the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants. As far as I can see, there is no doubt that the 3<sup>rd</sup> Defendant/Applicant's presence and participate in this suit is crucial and key.

In light of the foregoing, this Application is hereby dismissed. Costs shall be in the cause.

**DELIVERED AND SIGNED AT NAIROBI THIS 18<sup>TH</sup> DAY OF SEPTEMBER 2015.**

**MARY M. GITUMBI**

**JUDGE**