



Registered Trustees Redeemed Gospel Church v Osman (Environment & Land Case 387 of 2021) [2022] KEELC 37 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KEELC 37 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 387 OF 2021**

EK WABWOTO, J

APRIL 28, 2022

BETWEEN

REGISTERED TRUSTEES REDEEMED GOSPEL CHURCH PLAINTIFF

AND

ABDINOOR OSMAN DEFENDANT

RULING

1. This ruling is in respect of the defendants' Notice of Motion dated 2nd December 2021 wherein the Defendant seeks to have the Plaintiff's suit strike out with costs to him.
2. The application is supported by an affidavit sworn by the Defendant. In the said affidavit, he deposed that he has no interest in the parcel of land known as L. R. No. 209/19728 and neither is he the registered owner nor is he the agent of the owner.
3. Pursuant to directions issued by the court on 26th February 2022, the court directed that the application be canvassed through written submissions. The Defendant filed their submissions dated 7th February 2022 through the firm of Musdaf & Co. Advocates while the Plaintiff's submissions dated 1st March 2022 were filed by Muriithi Kireria & Associates. Counsel for the Defendant reiterated that the Defendant are not the registered proprietor of the suit property neither is he his agent. In turn, counsel for the Plaintiff submitted that the entire suit arose from a cause of action which is an action in rem that affect their right to property and that instead of the court striking out the suit, they should be allowed to amend their pleadings and be granted leave to enjoin the appropriate party.
4. I have carefully considered the application, the affidavits and the written submissions of the parties. The plaintiff has argued that they intend to amend their claim to join the correct party. The present application was filed on 2nd December 2021. Despite the proclaimed intention to amend, no amendment had been affected as to date. Even if the plaintiff were to effect such an amendment as is suggested, there is no way that they will maintain a cause of action against the defendant who is not the



registered proprietor of L.R No. 209/19728. The amendment will probably bring in a new defendant. What then happens to the current defendant. The plaintiff has not offered any explanation on that or even indicated what claim he has against the defendant.

5. The plaintiff has not shown how the claim against the present defendant can be salvaged. The Plaintiff did not do due diligence before filing this suit. Nowadays it is easier to get the correct details of any party before moving to court. The Plaintiff clearly flogged a wrong horse. I am alive to the draconian nature of an order for striking out and that it must be resorted to in the clearest of cases. I am persuaded that this is a clear case where striking out ought to issue.
6. In conclusion, I find merit in the application dated 2nd December 2021 and I strike out this suit with no orders.

Orders accordingly.

Dated, Signed and Delivered at Nairobi this 28th day of April 2022.

E. K. WABWOTO

JUDGE

In the Virtual Presence of:-

Ms. Ndumia for the Plaintiff.

N/A for the Defendant.

Court Assistant: Caroline Nafuna.

E. K. WABWOTO

JUDGE

