



REPUBLIC OF KENYA

High Court at Mombasa

Civil Suit 355 of 2009

CHRISTOPHER KAMAU KINYANJUI PLAINTIFF

- VERSUS-

CONNEL ONYANGO OCHIENG DEFENDANT

RULING

When this matter came for defence hearing in Court on 27th February, 2013 Learned Counsel Ms. Mango appeared for the plaintiff while Mr. Alado Learned Counsel appeared for the defendant.

Ms. Mango was prepared to proceed. Mr. Alado on his part said that he was not ready to proceed despite coming on record on 21st January 2013. He said that he has not been able to get the clients file from the previous advocate. He said he had some papers from his client and which papers he claimed were incomplete.

He sought the courts direction as to whether this was a land matter or a commercial matter.

Ms. Mango Learned Counsel for the plaintiff opposed the adjournment. She said that they were in court on 17/10/2012 and the case was adjourned and that, that adjournment was allowed as the last adjournment. She argued that this was a delaying tactic and further that she had not been informed of the difficulties the advocate for the defendant was experiencing. She said she believed that the plaintiff was in the right court.

This court made a ruling that the application for adjournment was unmerited, since the plaintiff could not be held at ransom because of the relationship of the defendant and his lawyers. However the Court found merit in Mr. Alado's assertion that there was an issue as to whether this was an Environment and Land matter or a Commercial matter. The matter was stood over for the Court to study the file and rule on the same.

The plaintiff filed this suit against the defendant claiming the following.

- a) vacant possession of the suit property or in the alternative an eviction order to be issued against the defendant to vacate the suit property.**
- b) Damages for loss of rent as pleaded for in paragraph 6 above**
- c) General damages for trespass**

d) Costs of this suit and interest thereon at Court rates.

The defendant filed a Statement of Defence and counterclaim claiming the following:-

- a) **Special damages of Kshs. 1,277,515 as against the 1st defendant.**
- b) **A declaration that the discharge of the Plot, transfer to the 2nd Defendant and the subsequent charge is illegal, null and void.**
- c) **The 2nd defendant to be compelled to return the property to the Plaintiff.**
- d) **The 1st defendants title to be removed and nullified for having been irregularly obtained.**
- e) **General damages against the 1st defendant for wrongful eviction.**
- f) **Exemplary damages for mental torture and embarrassment caused by the wrongful eviction of the 1st defendant.**
- g) **This Court to be at liberty to grant any other order this Honourable Court deems fit in the circumstances of this case for the justice of all the parties.**
- h) **Costs and interest of this suit.**

It is quite apparent that the prayers in the plaint puts this case squarely within the jurisdiction of this Court.

The Counterclaim on the other hand removes that jurisdiction and puts it squarely within the jurisdiction of Commercial division of the High Court.

A determination of the issues raised by the defendant in his counterclaim shall fully sort out and determine all the issues raised in the plaint. While a determination of the issues in the plaint may not fully sort out the counterclaim.

I, therefore rule that this case be referred to the Commercial Registry, for a date to be fixed by the parties before the relevant Court for the determination of the issues in the counterclaim.

Thereafter the parties if not satisfied may then decide on the next cause of action to take.

It is so ordered.

DATED and delivered at Mombasa this 20th day of May, 2013.

**S.N. MUKUNYA
JUDGE
20.5.2013**

In the presence of:

Mango Advocate for plaintiff'

Alado Advocate for defendant