



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CIVIL DIVISION
CIVIL CASE NO. 74 OF 2009

WILLIAM KIPKORIR MUTAI PLAINTIFF

versus

JOSHUA KIBET LANGATDEFENDANT

JUDGMENT

In his amended plaint dated 18/5/2010, **WILLIAM KIPKORIR MUTAI** claims that though he was at all material times the registered proprietor of the parcel of land that is known as **KERICHO/SOSIOT/2836**, which I shall henceforth refer to as 'the suit land', one **JOSHUA KIBET LANGAT**, whom he names as 'the defendant', did on diverse dates between November 2008 and February, 2009, trespass onto the said suit land, which act he contends was unlawfully and without any justifiable excuse or colour of right, thereby occasioning him loss and damage.

He therefore urges this court to inter alia award him damages for the said trespass and to issue him with an order of eviction against the defendant to otherwise to vacate the suit land; as well as an order of permanent injunction to restrain the said defendant from trespassing onto, occupying and or doing and other act which is prejudicial to his proprietary rights over the suit land.

Though **KIBET LANGAT** had already filed his defence to the cause before the amended plaint was filed and served, he however did not file an amended defence.

Be that as it may, he would seem to imply that there exists or existed a similar suit pertaining to the same

subject matter between the plaintiff and himself, and he thus puts the plaintiffs to strict proof of thereof.

He also maintains that he acquired from the plaintiff a piece of the suit land measuring 0.7 acres for valuable consideration in the year 2008, and that after he paid the full purchase price, the plaintiff not only executed the relevant forms for application for the consent of the Land Board, but that he also executed the relevant forms for the transfer of the land to him. He thus avers that it cannot in the circumstances be said to be a trespasser on the said land.

He denies having been issued with the relevant demand or notice of intention to sue, and also takes issue with the jurisdiction of this court, for in his view the matter ought to have been filed before the Land Disputes Tribunal.

The plaintiff has now moved this court by way of a Notice of Motion dated 20/7/2011, in which he seeks the following orders:-

- a) *That the defence filed herein on 16/11/2009 be struck out together with all other subsequent pleadings.*
- b) *That upon the aforesaid pleadings having been struck out summary judgment be entered in his favour.*
- c) *That the costs of this application be provided for.*

He relies on the grounds that:-

- a) *the defence filed herein raises no triable issues to be determined by this Honourable Court and the same ought to be struck out.*
- b) *the aforesaid pleadings being a sham judgment ought to be entered in his favour.*
- c) *the pleadings herein are therefore an abuse of the court process.*

The plaintiff, who has sworn an affidavit in support of this application, deposes that he never permitted the defendant to occupy the suit land, and that the defendant has thus no legal right to occupy it and that in the circumstances it is fair and just that he be ordered to vacate the said land.

It also his deposition that he truly believes that the defence raises no triable issue for determination, and that it ought to be struck out, otherwise, the defendant is likely to delay and or prejudice the fair hearing and determination of this suit.

I am alive to the fact that striking out of pleadings should be done sparingly for it is a draconian act, and where a party can breathe life to his pleadings, courts will more usually than not, disallow the application to strike out.

I have considered this application which though served was not defended and I find that the defence to the cause raises no triable issues for though the defendant concedes that he is in occupation and bases his action on the fact he acquired a piece of the suit land and that he paid the full purchase price for it, he has not alluded to the fact nor has he demonstrated that he has obtained the mandatory consent from the local Land Control Board for the transfer in his favour or even that he had the Title to the land transferred to him before he took possession of the land. Without these, there is clearly no triable issue herein and that being the case then, the defence is in my view, a sham, which ought not to be left on the record for to allow it to so remain would be tantamount to delaying the cause of justice.

I do therefore strike out the defence and enter judgment as follows for the plaintiff:-

. **an order of eviction against the defendant by himself, agent, servants, employees from the suit land.**

. **an order of permanent injunction restraining the defendant by himself, agents, servants, employees or otherwise from trespassing onto, occupying or otherwise dealing with the suit land.**

The plaintiff shall also have the costs of this application and the cause.

Dated and delivered at Kericho this 13th day of March 2012.

JEANNE GACHECHE

Judge

Delivered in the presence of:-

For the plaintiff/applicant– No appearance

For the defendant/ respondent – No appearance