

REPUBLIC OF KENYA

High Court at Embu

Civil Appeal 89 of 2011

**KINYUA GACHOKI.....PLAINTIFF/
RESPONDENT**

VERSUS

**EUSEBIA NJOKI NGARI.....DEFENDANT/
APPLICANT**

RULING

This is the Notice of Motion dated 15th October 2011 brought under section 3A and 96 Civil Procedure Act for orders that the Plaintiff's suit be struck out with costs on the grounds that is vexatious and annoying to the Defendant. And that it does not raise a credible and or reasonable issue as to constitute a cause of action known in Law. The application is supported by the Applicant's affidavit sworn on 14/10/2011. She reiterates the grounds and avers that the pleadings do not disclose any cause of action.

In his replying affidavit the Respondent says that he sold 1.21 hectares of land to the Defendant and not 1.51 hectares. Section 95 Civil Procedure Act is not applicable in the case.

I have perused the plaint herein and in it the Plaintiff does not deny selling land to the Defendant and he was paid the full amount. And that one Teresia Kangondu Erasto ought to have transferred the land to him and he transfers the land to the Defendant. But Teresia transferred it direct to the Defendant. He therefore asks the Court to cancel the title and have the same registered in the name of the Plaintiff.

The Defendant has filed a defence and counterclaim. She says she has title and is staying on the land. She wants the Court to declare that the land is hers. There is an agreement showing there was an agreement of sale of land by the Plaintiff to the Defendant who was fully paid. The land was in the name of Teresia Kangondu Erasto. If the Plaintiff had a separate agreement with Teresia about the land first being transferred to him there is nothing to show that. In any event even if there was one then his claim would be against Teresia Kagondu and not the Defendant. There is an annexure showing that the earlier agreement was cancelled. This annexure is alleged to have been drawn by Mr. Githinji Karuri advocate. The construction of that document and even the English in it does not portray the work of an advocate.

I find that the plaint does not disclose any cause of action against the Defendant herein. The Plaintiff is misusing the due process of the law for his own personal gain. The Plaintiff sold the land to the Defendant, and signed for the transfer. The Defendant is in possession and has documents. He is not alleging fraud and misrepresentation of any kind.

The ends of justice demands that the Plaintiff's claim as filed be struck out with costs. I so order.

DATED AND DELIVERED AT EMBU THIS 26TH DAY OF SEPTEMBER 2012.

H.I. ONG'UDI

J U D G E

In the presence of;
Njue – C/c