



**REPUBLIC OF KENYA**

**High Court at Nyeri**

**Civil Case 69 of 2010**

**JOHN MURIITHI KARIUKI.....PLAINTIFF**

**Versus**

**CHARLES KARIUKI KINGORI alias=KAGIKA.....DEFENDANT**

**RULING**

This is an application by the plaintiff/applicant in which the same seeks that the statement of defence and counter claim be struck out and judgment be entered in terms of the plaint.

It is supported by the affidavit of the plaintiff in which the same deponed that the defendant's case is technically invalid as the same does not have capacity to bring a suit or take up the purported defence of the deceased Martha Wangari Kagondi without proper letters of administration.

The application is opposed by the respondent on the ground that the same has a valid defence since the evidence before the lower court shows that the applicant committed fraud in obtaining title to the suit land.

The principles for striking out of pleadings are now well settled and need not be said as was stated by the court of appeal in *FREMAR CONSTRUCTION CO. LTD vs MINAKHSI NAVIN SHAH - NAIROBI CIVIL APPEAL NO. 85 OF 2005*.

***“This court has stated many times before and the learned judge of the superior court was conscious of it, that striking out of pleadings is a drastic remedy and the powers of the court are to be exercised with great caution and only in clear cases. But the power is clearly donated in the rules and exists inherently for the court in the interest of justice, to reject manifestly frivolous and vexatious pleadings and suits and to protect itself from abuse of its powers”.***

I have looked at the defendant's defence herein and is of the view that it raises arguable issues which ought to be ventilated upon at the full trial. They can only be proved and disapproved by or through evidence and as was stated in the case of *DT DOBIE & CO. (KENYA)LTD VS MUCHINA (1982)KLR1*

***“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no cause or reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows some semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward.”***

I have noted that the defendant has amended his defence herein appropriately and to my mind the

issue of fraud as pleading is a triable issue which ought to go on trial and which therefore render the defend not hopeless.

In the final analysis I therefore find no merit on the applicant's application herein and dismiss the same with cost to the respondent.

This being a land matter parties to fix the suit down for hearing before the relevant court.

Dated and delivered at Nyeri this 6th day of December 2012.

**J. WAKIAGA  
JUDGE**

Mr. Ng'ang'a for Mr. Nderi for Plaintiff  
Mr. Gichuki for Mr. K. Wachira for Defendant.

**J. WAKIAGA  
JUDGE**