



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO.206 OF 2009

**RIFT VALLEY AGRICULTURAL
CONTRACTORS**

LIMITED.....PLAINTIFF

VERSUS

LOCHAB BROTHERS LIMITED.....DEFENDANT

RULING

The plaintiff's cause of action in this dispute is stated thus:

“ 3. At all material time to this suit the plaintiff is the registered proprietor of all that piece of land known as CIS-MARA/EWASO NYIRO/679 measuring approximately 38.04 HA and situated within Narok District of Rift Valley Province

4. The plaintiff avers that the defendant came without any clear (sic) of right trespassed on the plaintiff's piece of land and is currently destroying plaintiff's plantations and crops on the field which is currently worth millions of shillings

4a. The plaintiff avers that the defendant without colour of right took possession and occupied the plaintiff's piece of land and has been using it for the last three years without payment of rent to the plaintiff.”

In the statement of defence, the defendant has denied trespassing on the plaintiff's CIS-MARA/EWASO NYIRO/679, interfering with that property, or destroying any crop. The defendant has also denied having occupied the suit property for the last three years without payment of rent.

The plaintiff has brought the present summons to strike out the defence on the ground that it amounts to a mere denial, is vexatious, frivolous and scandalous; that the defence is an abuse of the court process.

It is further explained in the affidavit of Benson Thiru Karanja, the director of the plaintiff, that the plaintiff purchased the suit property in 1995; that in 2007 the defendant simply took possession of the suit property without the plaintiff's consent or lease. Written demands addressed to the defendant to vacate the suit property have not been heeded to.

The application is expressed to be brought under the provisions of order **6 rule 13** of the revoked Civil Procedure Rules, under which the court could, at any stage of the proceedings strike out pleadings on four grounds, namely if they:

- i) do not disclose reasonable cause of action or defence in law, or
- ii) are scandalous, frivolous or vexatious or
- iii) may prejudice, embarrass or delay the fair trial of the action
- iv) otherwise amount to abuse of the process of the court

The applicant is relying on the first ground namely, that the defence raises no reasonable defence. In view of its draconian nature, the remedy of striking out is rarely resorted to. Indeed the above provision emphasizes the need to consider an amendment as opposed to striking out. The court will, however, strike out any pleadings in cases that are abundantly clear that they are hopeless and no amount of amendment can breath life into them.

In considering whether or not a pleading discloses no reasonable cause of action or defence, it is imperative that the court considers the entire pleadings in the file; the court must also be alive to its jurisdiction not to deal with the merit of the case for that is a function solely reserved for the trial judge.

See **Coast Projects Limited** Vs. **Mr. Shah Construction (K) Limited** (2004) 2KLR 119. It has further being held that even if only a single triable issue is raised in the pleadings, that is sufficient ground to go to hearing. In this dispute, I have set out the applicant's cause of action. It is contended that the respondent has trespassed on the suit property. The respondent has categorically denied that assertion.

There are of course other grounds raised by the respondent, but this denial of trespass is what must go to trial.

For that reason, this application fails and is dismissed with costs.

Dated, Delivered and Signed at Nakuru this 18th day of March, 2011.

W. OUKO
JUDGE