



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**COMMERCIAL CIVIL CASE 130 OF 2008**

**KENYA INDUSTRIAL ESTATES .....PLAINTIFF**

**=VERUS=**

**ANNE CHEPSIROR .....DEFENDANT**

**R U L I N G**

**Preliminary Objection**

**I.           Background**

1.       The main issue in the original suit before this Court is that of the ownership of Land Parcel L.R. Eldoret Municipality Block 8/53 that was originally LR 779/30. The said parcel of land was further sub-divided to Eldoret Municipality Block 8 to that of Eldoret Municipality Bock

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2.       The land is allegedly purchased from the Municipality of Eldoret on the 1<sup>st</sup> August 1965, being 5.06 acres that had been leased out for 34 years (namely 20<sup>th</sup> august 75 to 1<sup>st</sup> August 1999). The land is allegedly set aside for staff houses of the Plaintiff's Company. The lease was envisaged

to expired come the year 1999.

3. The Plaintiff clear failed to renew the said lease until the year 2002. Plaintiff having failed to renew the lease and pending of this being so done the renewal remained pending from 2002. The Land Registrar proceeded to issue to third parties including the Defendants a new deeds having been issued.

## **II. Applications**

4. An Application was applied for an injunction dated 18<sup>th</sup> October 2008. This was later compromised by consent on 19<sup>th</sup> may 2010 an application to discharge. To this end the application to discharge the injunction and dismiss the suit dated 4<sup>th</sup> October 2008 is withdrawn.

## **III. Preliminary Objection**

### **5. 13<sup>th</sup> October 2008**

(a) Lease expired in the year 1999. The normal extension was not applied for.

(b) There was admissions by the Plaintiff/Respondents of this anomaly.

(c) If fraud was being claimed then particulars should have been pleaded particularized.

6. In reply, only a pure point of law may be raised. In order to prove the aspect of fraud in a case evidence must be led.

## **IV. Opinion**

In the case of

**Mukisa Biscuit Manufacturing Co. Ltd –versus- End Distributors Ltd (1969) E.A. 696**

The issue of when Preliminary Objection would be raised was dealt with. The pure point of law should be raised.

7. In this case, the element of fraud, particulars having not been pleaded was raised as a Preliminary Objection. The pleading may always be amended.

8. The issue of the renewal of lease is also a matter of evidence before Court. There is the issue of 'Les Pendite' that requires to also be demonstrated.

9. I over rule the Preliminary Objection raised and dismiss the same with no orders as to costs.

**DATED THIS 3<sup>RD</sup> DAY OF JUNE 2010 AT ELDORET.**

**M.A. ANG'AWA,**

**JUDGE.**

**Advocates**

**(i) Lumumba Advocate instructed by the firm of M/s Lumumba & Lumumba & Co. Advocates**

**for the Plaintiff/Respondent – Absent**

**(ii) E.Gumbo Advocate instructed by the firm of M/s Gumbo & Associates for the Defendant/Applicant- Absent**