

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Election Petition 177 of 2010

JOHN ROKI WAITHAKA.....PLAINTIFF/APPLICANT

VERSUS

KATRAM LIMITED.....1ST DEFENDANT

RAHAB MUKIAMA.....2ND DEFENDANT

RULING

The plaintiff brought this suit against both defendants in respect of a parcel of land known as LR.20530 in Nairobi. Alongside the said suit he filed an application by way of Chamber Summons for injunction orders. Before the application was heard inter partes the learned counsel for the defendants filed a Notice of Preliminary Objection to the effect that the plaint does not disclose any reasonable cause of action against the 2nd defendant and that her name should be struck out of the pleadings.

Both learned counsel have filed submissions in respect of the Preliminary Objection. As at the time of filing the submissions the learned counsel for both defendants had filed defences in respect of both defendants. I have looked at the plaint, the defences and the submissions of both learned counsel in respect of the Preliminary Objection. Going by paragraphs 8,9,10,11,12 and 13 of the plaint it cannot be said that there is no cause of action against the 2nd defendant at this stage before the issues are drawn at an appropriate stage. In any case, no suit shall be defeated by reason of mis-joinder or non-joinder of parties. See Order I Rule 9 of the Civil Procedure Rules.

A Preliminary Objection consists of a point of law which has been pleaded or which arises by a clear implication out of pleadings and which if argued as a preliminary point may dispose the suit.

The preliminary point raised at this stage on behalf of the 2nd defendant in my view, cannot dispose off the allegations by the plaintiff against both defendants jointly and severally. I am of the view that, the same has been raised prematurely and is therefore dismissed with costs to the plaintiff.

Orders accordingly.

Dated, signed and delivered at Nairobi this 29th day of September, 2010.

A. MBOGHOLI MSAGHA
JUDGE