



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

Commercial Civil Case 30 of 2003

ENOS WAFULA LUKORITO & 5 OTHERS:..... PLAINTIFFS

~VRS~

KISON CHESEBE CHEMOSIT :..... DEFENDANT

RULING

The six (6) Applicants in their Chamber Summons dated 06/09/2005 brought under Order VI Rule 13 (b) (c) and (d) and Order XXXV Rule 1 seeks for the following orders:

- a) That the Defendant's defence filed on 2nd September, 2003 be struck out.
- b) That summary judgment be entered against the Defendant.
- c) That the Defendant pay the costs of this suit.

The facts leading to the filing of this application are that the Applicants have sued the nine (9) Defendants/Respondents for eviction from their respective parcels of land. The Plaintiffs inherited their land from the estate of their deceased father. The land was originally L.R.Number Elgon/Kaptama/268 registered in the name of Joshua Futiera Wachana. The 1st Plaintiff Enos Wafula Lokorito being the administrator of the deceased's estate distributed the land to the beneficiaries and to himself. The sub-division created the following parcels which were registered in the respective names of the Plaintiffs for each one's share:

1.	NAME	L.R. NUMBER
2.	PIUS CHOGE CHEMLANY	580
3.	SARAH NAFULA FUTIERA	581
4.	MATAYO WANYONYI WALUBUKA	582
5.	ROSE NASAMBU JUMA	583
	PHILIMON PSITET CHEMLANY	584

The Respondents have no legal interest in the said land parcels and have occupied them thus preventing the applicants from enjoying their ownership rights.

The grounds supporting the application are that the defence filed by the Defendants jointly is scandalous, a sham and an abuse of the due process of the court. The applicants argue that the defence discloses no reasonable defence and ought to be struck out. On striking out

the defence the Applicant prays for summary judgment in favour of the Plaintiffs against the Defendants.

The joint defence of the nine (9) Defendants simply denies the claim of the Plaintiffs thus:

Paragraph 3. In answer to paragraph 6, the Defendants deny that the first Plaintiff is the lawful administrator of the estate of the late Joshua Futiera Wachana.

Paragraph 4. The Defendants deny paragraphs 7, 8 and 9 of the plaint.

It is important to note that paragraphs 7, 8 and 9 deal with the Respondents unlawful entry into the land. The denials in the two material paragraphs of the defence are mere denials. Order VI, Rule 9 requires that a party denies allegations specifically and not generally. The general denials are evidence of lack of a reasonable defence to the claim. The Plaintiffs have annexed the grant of letters of administration in the name of the first Plaintiff. He was appointed the administrator in the estate of the deceased on the 16th June 1998. In 2002 the 1st Plaintiff distributed the estate of the deceased to the beneficiaries as shown by the title deed annexed. The titles are proof of ownership of the respective parcels of land by the Plaintiffs. The nine Respondents must be on the applicant's parcel of land for different reasons. A joint and general defence does not suffice in denying the serious allegations in the plaint that they entered the land without any colour of right. The defence is therefore scandalous, vexatious and an abuse of the due process of the court. I am satisfied that the joint defence does not constitute a reasonable defence to the Plaintiff's suit. Order VI Rule 13 (1) empowers this court to enter judgment on striking out the defence. Order XXXV Rule 1 (b) provides for summary judgment in a case of recovery of land from a trespasser. This provision is not relevant in this application since the court has already ruled that the requirements of Order VI Rule 13 (1) have been satisfied.

I find the application merited and allow it accordingly. The joint defence dated 7th August 2003 is hereby struck out with costs to the Plaintiffs. Judgment is entered in favour of the Plaintiffs against the Defendants jointly and severally as prayed in the plaint. The Plaintiffs are at liberty to adduce evidence on the mesne profits (prayer (b) to enable the court decide on the figure and the period applicable.

**F. N. MUCHEMI
JUDGE**

Judgment dated and delivered on the 6th day of Octobe 2010 in the presence of Mr mukisu for kakoi for the Appellants/plaintiff.

**F. N. MUCHEMI
JUDGE**