



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

LAND AND ENVIRONMENTAL LAW DIVISION

CIVIL SUIT (ELC) NO.417 OF 2007

WANJIRU NJUNGE

LIKAMA.....PLAINTIFF

VERSUS

- 1. LENTE KITUNGAT NYAPAIWA**
- 2. JOEL KANCHORI OLE SINKEEN**
- 3. DANIEL KSHIL OLE NKINYI**
- 4. AMOS TAJAYA**

SANKITIDEFENDANTS

- 5. DISTRICT LAND REGISTRAR KAJIADO**

Thro. HON ATTORNEY GENERAL for and on behalf of the DISTRICT

LAND REGISTRAR, KAJIADO

RULING

1. What is before me is a chamber summons application dated 20th May, 2009 brought by the defendants. The applicants sought several orders most of which have been dealt with. The applicants are now pursuing prayer No (4) which seeks to have the plaintiff's suit dismissed with costs as it is inter alia an abuse of the court process. It is contended that the plaintiff is not the registered owner of the suit property; that the plaintiff's claim is fraudulent and that she has been guilty of material non disclosure.

2. The defendants claim to be the owner of the suit property. They also claim to have been in the exclusive possession of the suit property for a period of over 30 years. It is maintained that the grounds of opposition filed by the plaintiff to the application, do not controvert the facts. The court was urged to dismiss the plaintiff's suit as it is an abuse of the court process. It is also noted that the plaintiff has not taken out any summonses since the suit was filed.

3. The application was duly served on the plaintiff who filed grounds of opposition objecting to the application on the grounds that it is an abuse of the court process and that the plaintiff has a good case based on a solid cause of action. During the hearing of the application there was no attendance on behalf of the plaintiff.

4. I have given due consideration to this application. I do note that the application is supported by a lengthy affidavit duly sworn by the 1st applicant. In the affidavit several issues of facts have been deponed to. However, the plaintiff has not sworn any affidavit to controvert any of those facts. In the light of the adverse allegations made under oath against the plaintiff, and in the absence of any response by the plaintiff, the court can only construe the allegations to be of substance. Secondly, since the application was filed more than 3 years ago, the plaintiff has not taken any serious action to serve the defendants with summons. Thirdly, although the plaintiff filed grounds of opposition, nothing was placed before this court in support of the allegation that the defendants' application is an abuse of the court process or in support of the plaintiff's contention that he had a solid case.

5. In the circumstances, I grant the chamber summons dated 20th May, 2009 and issue orders dismissing the plaintiff's suit for being an abuse of the court process.

Dated and delivered this 10th day of November, 2010

H. M. OKWENGU

JUDGE

In the presence of: -
Advocate for the plaintiff/respondent absent
Kamau L.W. for the defendants/applicants
B. Kosgei - Court clerk