



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL CASE 575 OF 2006

ISAIAH NYABUTI ONCHONGA:.....PLAINTIFF

VERSUS

HOUSING FINANCE CO. LTD:..... 1ST DEFENDANT

ISAAC GODFREY ARERI..... 2ND DEFENDANT

R U L I N G

The application dated 25th March and filed in court on 1st April 2008 seeks to have struck out the plaint and the suit against the 2nd Defendant be dismissed or in the alternative the Plaintiff/Respondent do give security of the costs of the 2nd Defendant and for costs of the Application to be provided for. It is supported by the Affidavit of the 2nd Defendant. It is based on the grounds that the amended plaint discloses no reasonable cause of action against the 2nd Defendant/Applicant. That the suit against the 2nd Defendant is scandalous, frivolous and/or vexatious as the Applicant is merely a purchaser from the 1st Defendant of all that piece of land situate in Nairobi known as Land Reference Number 209/8323/94..... and that the suit against the 2nd Defendant is otherwise an abuse of the court process.

The Application was opposed and it was submitted that the amended plaint pleads fraud and conspiracy on the part of the Defendants herein in transferring the suit property to the 2nd Defendant in the face of a court order.

I have considered the application and submissions by all learned counsel for their respective parties. I have also perused the Amended plaint.

In paragraph 16(1) thereof the 1st and 2nd Defendants are alleged to have acted illegally and fraudulently to defeat the plaintiff's claim. The suit land is in the name of the 2nd Defendant now. The 2nd defendant thus becomes a necessary party to these proceedings and that is why this court gave orders enjoining him as such. The subject matter of the suit is the land that now the 2nd defendant holds. Issues have been brought touching on how title passed to him. That is not a frivolous issue. There are issues the 2nd Defendant himself has to answer at the hearing as to his role in the alleged fraud. There is in my view disclosed a cause of action against the 2nd Defendant in the Amended plaint. Nothing is disclosed in the application to make this court exercise its jurisdiction of summarily dismissing the suit against the 2nd Defendant. It is not a fit plain and obvious case disclosing no cause of action. In my considered view this is a case for a full trial.

The court was not given any material upon which it could order that the plaintiff gives security for costs. This prayer fails.

The upshot of the above is that the 2nd Defendants application fails and the same is dismissed with costs.

It is so ordered.

DATED AT ELDORET THIS 18TH DAY OF FEBRUARY, 2009

P.M.MWILU

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI THIS 6TH DAY OF MARCH.2009

J.W.LESIIT

JUDGE

IN THE PRESENCE OF:-

..... Court Clerk

.....Advocate for the Plaintiff/Respondent

.....Advocate for the 1st Defendant

.....Advocate for the 2nd Defendant/Applicant