



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

Civil Case 1549 of 1998

1. Land and Environmental Law Division

2. Subject of main suit: Land

- b) Suit Trespass
- c) 2-13 defendants counter claim
- d) Land buying company
- e) Suit dismissed by Rawal J on 31.10.07
- f) No hearing of counter-claim

3. Application of 12 November 2007

- a) Eviction orders application of the plaintiff from suit land
- b) Reasons – suit dismissed

4. Opinion

That only main suit dismissed. No right to have orders of eviction.

5. Held:

- 5.1. The main suit was dismissed by Rawal J on 31.10.07. The trial should have proceeded to hearing of the counter-claim.
- 5.2. That counter-claim not being heard on eviction application refused.
- 5.3. Counter claim be set down for hearing.

6. Case Law – Nil

7. State Law Order 9b r 4 Civil Procedure Rules

8. Advocate:

O. Agina of Agina & Associates Advocates for the defendant/applicant – present

J.N. Pareno of J.N. Pareno & Co. Advocates for the defendant - present

PEREMERES OLE KOILEL PLAINTIFF

VERSUS

- 1. MOSHORO GROUP RANCH**
- 2. NTARI MOSHORO**
- 3. SALIMU KINDI**
- 4. SIMON MUTUTUA**
- 5. KINKI KOILEL**
- 6. LESHUNET KOILEL**
- 7. LEMISOS KOILEL**
- 8. RUPEN KOILEL**
- 9. NKOSHOO NGOTIEK**
- 10. MPOYO SUNGUYIAH STEPHEN**
- 11. JOSEPH K. SUNGUYIAH**
- 12. ALFRED OLE LOONTUROT**

13. ENE KOILEL KALAITE DEFENDANTS

RULING

I: Application 12.11.07 to evict the plaintiffs from suit land

A: Background

1. The plaintiff respondent belong to a land buying company. An issue arose as to their status on land owned by the parties. They filed this suit while the defendant filed defence and a counter-claim.
2. When the matter came up for trial before Rawal J it was dismissed on 31.10.07 I believe for non attendance.
3. The defendant/respondents filed this application dated 12.11.07 seeking orders to have the plaintiffs respondents evicted from the suit land.

II: In reply by respondent/plaintiff

4. The respondent/plaintiff opposed the application in that the fact that the suit was dismissed did not mean that the right to be evicted followed.

III: Opinion

5. The Hon. Lady Justice Rawal has been taken to another division. When this file was placed before her she declined to deal with it for the said reasons. Under Order 17 r 10 Civil Procedure Rules I now deal with the said file.

6. I note that according to the suit before me – the Hon. Judge dismissed it. The trial should thereafter had continued on the counter-claim filed by the defendant and heard. Part of the prayers in question was indeed the issue of eviction that would have evidence taken down and judgment thereafter given. Order IXb r 4 Civil Procedure Rules applied.

7. I believe the advocate for the respondent is correct. That an eviction herein should have been heard in the counter claim. Once orders are given then do the applicant come to court for enforcement.

8. I decline to give the application and order that the counter claim only be set down for trial.

Costs to the respondent/plaintiff.

DATED THIS 12TH DAY OF MARCH 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

O. Agina of Agina & Associates Advocates for the defendant/applicant – present

J.N. Pareno of J.N. Pareno & Co. Advocates for the defendant - present