



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

CIVIL CASE 589 OF 2006

BETH WANJIRU GICHIOMIPLAINTIFF

V E R S U S

JAMES MARTIN NJUMADEFENDANT

R U L I N G

This is an application (chamber summons dated 19th October, 2006) by the Defendant under Order 6 rule 13(1) paragraphs (b), (c) and (d) of the Civil Procedure Rules (the Rules) for an order to strike out the Plaintiff's suit upon the main ground that the same is frivolous, vexatious and an abuse of the process of the court. It is supported by an affidavit sworn by Defendant and annexed to the application. Facts disclosed by the supporting affidavit and which appear not to be in dispute are:-

1. That the suit land, **L.R. No. Kajiado/Kitengela/6619**, was registered in the name of one VINCENT SANKALE ROIMEN as absolute owner thereof. He was the husband of the Plaintiff.
2. The said Vincent Sankale Roimen owed the Defendant the sum of KShs. 1,273,000/00 as at 27th January, 2006.
3. By a written agreement dated 27th January, 2006 the said Vincent Sankale Roimen agreed to pay the sum owed to the Defendant by instalments. He deposited with the Defendant as security the original title to the suit land together with a duly executed transfer form and an application for land control consent. He further agreed that in default of payment of the debt as agreed the Defendant shall without any reference to him transfer the suit land into his own name and shall give therefrom and retain a portion of the land equivalent to the debt outstanding. It appears that Vincent Sankale Roimen never paid the sum owed to the Defendant, and the Defendant transferred the suit land to himself in terms of the agreement.

It is the Defendant's case in this application that Vincent Sankale Roimen having been the absolute owner of the suit land the Plaintiff, though his wife, cannot and does not have any *locus standi* to bring the present suit.

The Plaintiff has opposed the application as set out in the grounds of opposition dated 15th November, 2006. Those grounds are:-

1. That the application lacks merit because the suit raises issues of disposal of a family asset without necessary consents.
2. That the value of the property far exceeds the amount agreed between the Defendant and the owner of the property.

3. That the Defendant's intention is against the spirit of the agreement between him and the owner of the property.
4. That the Plaintiff, being a person interested in the property, has never been called upon to pay the sum owed to the Defendant by the owner of the property.
5. That the Defendant has been dishonest and guilty of the non- disclosure of material facts.

The Plaintiff did not file any replying affidavit.

I have considered the submissions of the learned counsel for the Defendant. Though served, there was no appearance for the Plaintiff at the hearing of the application.

The present suit in essence challenges the agreement between the Defendant and the Plaintiff's husband dated 27th January, 2006 under which the suit land was transferred into the Defendant name. As already observed, the Plaintiff's husband was the absolute registered proprietor of the suit land. The copy of the title deed is exhibited in the supporting affidavit; no overriding interests appear to be noted in the register of land. The husband's capacity to enter into contracts is not impugned in any way in the plaint. In any event the Plaintiff has not brought the suit as a friend of her husband.

The Plaintiff was not a party to the agreement in question between her husband and the Defendant. She was also not a co-proprietor of the suit land. Upon what basis then can she challenge the agreement between the proprietor of the suit land and the Defendant? Clearly she has no *locus standi*. Only her husband, who was the proprietor of the land and party to the agreement with the Defendant, can challenge the agreement. The present suit is therefore misconceived.

In the event I will allow the application by chamber summons dated 19th October, 2006. The Plaintiff's suit herein is hereby struck out with costs to the Defendant. Regarding prayer 3 of the application, there are no particulars given of any restriction registered against the suit land; no copy of the register of the land showing such restriction has been exhibited. That prayer therefore cannot be granted.

DATED AT NAIROBI THIS 14TH DAY OF APRIL, 2008

H. P. G. WAWERU

J U D G E

DELIVERED AT NAIROBI THIS 18TH DAY OF APRIL, 2008