



REPUBLIC OF KENYA



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Muthee & 62 others v Njonjo t/a Waroma Investments & another (Environment & Land Case 551 of 2015) [2022] KEELC 13801 (KLR) (25 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13801 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 551 OF 2015
MD MWANGI, J
OCTOBER 25, 2022

BETWEEN

JOHN KAHUHO MUTHEE 1ST PLAINTIFF
MARGARET SETH 2ND PLAINTIFF
JOSEPH MATUNDA 3RD PLAINTIFF
JANEPHER OLWAL 4TH PLAINTIFF
RICHARD ARAMA & 58 OTHERS 5TH PLAINTIFF

AND

LUCY WANJIRU NJONJO T/A WAROMA INVESTMENTS 1ST DEFENDANT
JACINTA WANJIRU MARY T/A NJEMUWA INVESTMENTS 2ND
DEFENDANT

RULING

(In respect of the notice of motion dated February 22, 2018 seeking that the plaintiff's suit be struck out for being vexatious and an abuse of the process of the court)

Background

1. This ruling is in respect of a notice of motion dated February 22, 2018 by the 2nd defendant seeking the following orders: -
 - a. That the plaintiff's suit be struck out for being vexatious and an abuse of the process of the court.
 - b. That costs of the application be provided for.



2. The application is premised on the grounds on the face of it and further supported by the supporting affidavit of Jacinta Mary Wanjiru, the 2nd defendant, sworn on the February 22, 2018. The 2nd defendant owns plots on a parcel of land known as LR No 10090/109 which is the suit property. They sub-divided the land and sold plots to the plaintiffs who not only took possession of their respective plots but have developed them as well.
3. The 2nd defendant depones that after the sale to the plaintiffs, they instructed their surveyors to apply for the requisite approvals. The plaintiffs on their part were to pay the fees for the deed plans in order for the approvals to be done by the Land Registrar and subsequently titles to be processed. However, the plaintiffs did not pay the necessary fees as directed hence the delay. The plans were later approved in the year 2013.
4. The 2nd defendant asserts that at the time the suit was filed, the said approvals had not been given and the suit was therefore premature. She further states that the land's office is not a party to the proceedings herein and as such the orders sought by the plaintiffs cannot be granted.
5. The application is opposed by the plaintiffs who filed grounds of opposition dated March 28, 2019 and a replying affidavit deponed on the June 2, 2022 by the 1st plaintiff.

Grounds of opposition

6. The plaintiffs contend that the application by the 2nd defendant is mischievous, and an afterthought aimed at defeating the course of justice. That the application is in blatant defiance and disobedience of express court orders. Further that the applicant is estopped from making the allegations contained in the application.
7. They further argue that the application does not disclose the nature of injury suffered or likely to be suffered by the applicant should the trial proceed and the main suit be heard on its merit. The application is therefore only meant to scuttle the hearing of the main suit and is therefore an abuse of the court process, ill-motivated, malicious and should therefore be dismissed as it is against public interest.

Replying Affidavit

8. The replying affidavit in opposition to the application was sworn by the 1st plaintiff, John Kahuho Muthee, on behalf of the other plaintiffs. He states that the plaintiffs bought several portions of land from the 1st and 2nd defendants being part of LR No 10090/ 109. They were each subsequently issued with share certificates and receipts by the defendants.
9. That upon payment of the transfer fees and issuance of the receipts, the defendants demanded for payment of more monies to facilitate the processing of titles. That some purchasers have since been issued with the titles.
10. The deponent further avers that despite the plaintiffs' herein having paid the additional fees demanded, the defendants have refused to give them their titles and only shared with them copies of their titles. That the defendants are now demanding that the plaintiffs do withdraw the suit herein as a pre-condition of issuance of titles.
11. The plaintiffs assert that no justifiable reason has been offered by the defendants on why they are holding on to the plaintiffs' original titles. The application by the 2nd defendant is a mere delaying tactic aimed at denying the plaintiffs their constitutional right to property. It is therefore in the interest of justice that the application by the 2nd defendant be dismissed with costs.



Court's Directions

12. The court's directions were that the application by the 2nd defendant be disposed of by way written submissions. The 2nd defendant/ applicant complied and filed her written submissions dated the July 8, 2022. The plaintiffs did not file their submissions despite the 14 days period granted by the court on the April 21, 2022 lapsing.

2nd Defendant's Submissions

13. The applicant's submissions are dated the July 8, 2022. She submits that she owned 136 plots in the suit property some of which were sold to the plaintiffs. Titles were issued but the plaintiffs were yet to pay the requisite charges. She argues that the purchasers who promptly paid the fees for deed plans and approvals took possession of their respective plots and even developed them. However, those who did not pay promptly caused a delay in the processing of their titles.
14. The 2nd defendant argues that the plaintiffs filed the instant suit prematurely as the approvals had not been given by the time they filed the suit. Therefore, the orders sought in the main suit could not be granted without the necessary approvals. Further, the orders sought cannot be granted now without the addition of the Land Registrar as a party to the proceedings.
15. The 2nd defendant asserts that the suit is overtaken by events as approvals were subsequently issued and titles issued in favour of the plaintiffs. That all that is remaining is for the plaintiffs to pay the requisite fees before being given their original titles. The applicant cites the case of *Fredrick Njoroge & 2 others -vs- Francis Maingi Njoroge & another* (2019) eKLR.

Issues for Determination

16. I have considered the application, grounds of opposition, the replying affidavit, and the applicant's submissions. The main issue for determination is whether the plaintiffs' suit is vexatious and an abuse of the court process warranting its striking out.

Analysis and Determination

17. The motion is expressed to be brought under order 2 rule 15 of the *Civil Procedure 'Code'* which provides as follows;

“Rule 15 (1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

- (a) It discloses no reasonable cause of action or defence in law; or
- (b) It is scandalous, frivolous or vexatious; or
- (c) It may prejudice, embarrass or delay the fair trial of the action; or
- (d) It is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

18. In the case of *County Council of Nandi vs Ezekiel Kibet Rutto & 6 others* [2013] eKLR, Justice Munyao discussed the meaning of the above terms as follows:-

“A scandalous pleading in my view is a pleading that attempts to put the other party into bad light. It attempts to disparage the other party to the proceedings. Such pleadings border on



defamation. However, such disparaging words attributed to the other party must not be in issue in the suit. If they are in issue in the suit, then of course the words cannot be scandalous. They must be disparaging pleadings which are completely irrelevant to the proceedings in issue.

A frivolous pleading in my view is a pleading that completely lacks a legal foundation. It is a pleading that discloses no cause of action and serves no purpose at all. For example if a litigant founds his cause of action on a law that has been repealed, then such pleading obviously lacks legal foundation and can be said to be frivolous.

A vexatious pleading in my view is a pleading whose only purpose is to annoy or irritate the other party to the suit. It may be, though not necessarily, a frivolous pleading or a scandalous pleading. Its main quality is that it stands out as a pleading only aimed at harassing the other party.

A pleading that is an abuse of the process of court in my view encompasses scandalous, frivolous, or vexatious pleadings but goes a little further to take care of situations that may not otherwise be encapsulated in the definition of the three preceding words. They can encompass situation where a litigant is using the process of court in the wrong way, not for purposes of agitating a right, but for other extraneous reasons”.

19. Striking out of pleadings is a drastic remedy that should only be resorted to where a pleading is a complete sham. The Court of Appeal in the case of [*Blue Shield Insurance Company Ltd vs Joseph Mboya Oguttu*](#) [2009] eKLR restated these principles as follows:

“The principles guiding the court when considering such an application which seeks striking out of a pleading is now well settled. Madan JA (as he then was) in his judgment in the case of *DT Dobie and Company (Kenya) Ltd vs Muchina* (1982)KLR 1 discussed the issue at length and although what was before him was an application under order 6 rule 13 (1) (a) which was seeking striking out a plaint on grounds that it did not disclose a reasonable cause of action against the defendant, he nonetheless dealt with broad principles which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case *inter alia* as follows: -

“The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof, before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of court. At this stage the court ought not to deal with any merits of the case for that is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits “without discovery without oral evidence tested by cross examination in the ordinary way”

Seller LJ (*supra*) as far as possible, indeed not at all, there should be no opinion expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks it right. If an action is explainable as a likely happening which is not plainly and obviously impossible the court ought not to overact by considering itself in a bind summarily to dismiss the action. A court of justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally, a law suit is for pursuing it.

No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption



and incurable by amendment. If a suit shows a mere semblance of a cause of action provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of the case before it.”

20. By and large, its trite law that striking of a suit is such a draconian and drastic decision on litigation which should be resorted to sparingly and only be exercised in the ‘clearest of cases’, in ‘plain and obvious cases’ where the pleadings in question were unsustainable.
21. From the pleadings herein, the plaintiffs contend that they have paid all the requisite fees to the defendants for the processing of their titles. However, they allege that despite the Titles being issued, the defendants have adamantly held onto them. On the other hand, the defendants maintain that at the time of filing this suit, the approvals to the deed plans had not been granted hence the suit was prematurely filed. That the approvals were later granted and in fact titles issued. They argue that the plaintiffs have not paid all the requisite fees that is why they are holding on to their original titles.
22. The issues in this matter are literally ‘popping up’ from the pleadings. This suit cannot be said to be frivolous or vexatious. I disagree with the 2nd defendant’s submissions that the plaintiffs’ suit is an abuse of the process of court.
23. The applicant has failed to demonstrate that the plaintiffs’ suit is scandalous, frivolous, vexatious or an abuse of the court process.
24. The application is hereby dismissed with costs to the plaintiffs.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 25TH DAY OF OCTOBER 2022

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Wambui for the 1st Defendant.

Ms. Waweru for the 2nd Defendant/Applicant.

No appearance for the Plaintiffs.

Court Assistant: Hilda.

M.D. MWANGI

JUDGE

