REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Case 261 of 2005

NATIONAL CEREALS & PRODUCE BOARD……..PLAINTIFF

VERSUS

JAMES MURANGA & 3 OTHERS….....…..……DEFENDANTS

RULING

This is an application by the plaintiff under Order 35 Rule 11B and Order 6 Rule 13(1)(b), (c) and (d) of the Civil Procedure Rules for summary judgment or in the alternative the striking out of this suit. The application is based mainly on the ground that the plaintiff being the indisputable registered proprietor the piece of land known as Title Number Subukia/Subukia/13/2 (the suit piece of land) the defendant's defence is clearly untenable.

The powers given to the court to strike out pleadings under Order 6 Rule 13 or to enter summary judgment under Order 35 of the Civil Procedure Rules sometimes referred to as summary procedure, are draconian, coercive and drastic. And because a party may thereby be deprived of his right to a plenary trial, the court should exercise those powers with the greatest care and circumspection and only in the clearest of cases as regards the facts and the law—Lord Justice Fletcher Moulton in Dyson Vs AG [1911] 1 KB 410. The summary procedure under this provision should only be adopted when it can be clearly seen that a claim or answer is on the face of it obviously unsuitable. A pleading will not be struck out under this procedure unless it is such that no legitimate amendment can save—D T Dobie Case

Summary judgment can only be entered in cases where the matter is plain and obvious that there is no sustainable defence. See **ICDC – Vs – Darber Enterprises Limited (2000) 1 EA 75**. Where, however, there is a "reasonable or plausible and bona fide (defence) the judge has no discretion; the defendant is entitled to unconditional leave to defend." – **City Printing Works (Kenya) Limited – Vs – Bailey (1977) KLR 85 at page 88**. See also **Osodo – Vs – Barclays Bank International Limited (981) KLR 30**.

In this case the defendants claim in their defence that they occupy a piece of land allocated to them by the County Council of Nakuru which is quite different and distinct from that of the plaintiff. They also claim that the plaintiff fraudulently obtained title to the piece of land known as Title Number Subukia/Subukia/13/2. These are serious issues which I cannot dismiss off hand. Whether or not they will hold I cannot say having not heard evidence in this case.

In the circumstances I find no merit in the defendant's application dated 31st July 2007 and I accordingly dismiss it with costs.

DATED and delivered at Nakuru this 28th day of October, 2008.

D. K. MARAGA

JUDGE.