

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 445 of 2000

MARY KIGO MUNGAI.....1ST PLAINTIFF

FRANCIS MWAURA KURIA.....2ND PLAINTIFF

VERSUS

SAMUEL MBURU KIRATU.....1ST DEFENDANT

**DANIEL NGANGA KIRATU.....2ND
DEFENDANT**

RULING

By his notice of motion dated 16th May 2008 and filed on 5th June 2008 the first defendant seeks under Section 3A of the Civil Procedure Act and Order 6 Rule 13(a), (b) and (d) of the Civil Procedure Rules the striking out of this suit as against him on the ground that even his admission of the plaintiffs' claim there is nothing in this suit to be taken to hearing. In the circumstances he claims that the plaintiffs' claim against him is frivolous vexatious and otherwise an abuse of the process of the court and should be struck out.

Having perused the pleadings in this case and the second plaintiff's replying affidavit I am satisfied that if anything it is the first defendant's application which is frivolous, vexatious and otherwise an abuse of the court process. The first defendant admits having sold and transferred a portion of his land to the first plaintiff. He also admits that to bail him out of the contempt of court charge against him the first plaintiff retransferred that portion to him. After he purged his contempt he has not transferred the portion back to her thus forcing the plaintiffs to file this suit. True he has admitted the plaintiffs' claim both in his defence and in the affidavit in support of this application. He claims that the reason why he has not transferred the land back to the first plaintiff is because of the caution she has lodged against the title. I find that to be an excuse rather than the reason why she has transferred the land back to the first plaintiff.

Besides the plaintiffs' claim there is the second defendant's counter claim from which the first defendant cannot be allowed to run away. In the circumstances this application has absolutely no merit and the same is hereby dismissed with costs to the plaintiffs.

DATED and delivered at Nakuru this 19th day of November, 2008.

D. K. MARAGA

JUDGE