



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

Civil Case 103 of 2007

KINGS ESTATE LTD.....PLAINTIFF

VERSUS

AMOS NGATA KAMAU.....1ST DEFENDANT

JANE KAGAL.....2ND DEFENDANT

ANN KASOA.....3RD DEFENDANT

RULING

The plaintiff brought this suit against the defendants jointly and severally for:

- (a) A Permanent Order of Injunction restraining the Defendants jointly and severally, their agents, servants, employees and/or anyone claiming under them from further encroaching, occupying, and trespassing upon the plaintiff’s property, namely NAIROBI/BLOCK 82/1764.
- (b) A Mandatory Injunction do issue compelling the Defendants jointly and severally, their servants, and/or agents and any other person occupying NAIROBI/BLOCK 82/1764 to immediately and unconditionally remove any material deposited or erected thereon.
- (c) A Declaration that the Plaintiff is the legal owner of the suit property for the period of the lease.
- (d) Costs of the suit.

The Defendants on being served with the summons raised a Preliminary Objection to the suit.

Mr. Omino counsel for the 3rd Defendant submitted that the Preliminary Objection is based on the Provisions of Section 6 of the Civil Procedure Act and Order VII Rule 2 of the Civil Procedure Rules in that there is another suit being **HCCC No.529 of 2004** between the same parties.

Section 6 of the Civil Procedure Act provides:-

“6” No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom, they or any of them claim, litigating under the same

title, where such suit or proceeding is pending in the same court or any other court having jurisdiction in Kenya to grant the relief claimed.”

Further Mr. Omino submitted that the plaintiff also contravened the provisions of Order VII Rule 2. The Plaintiff was accompanied by a Verifying Affidavit in which the plaintiff stated that there is no any other suit pending between the same parties.

Mr. Omino sought orders to strike out the suit.

Mr. Gikandi counsel for the 1st and 2nd defendants concurred with Mr. Omino and associated himself with his submissions.

Miss Migiro counsel for the plaintiff opposing the defendant’s Preliminary Objection submitted that the points raised by the defendants are not points of law.

She further submitted that there is no any other suit pending between the same parties as the suit referred to by Mr. Omino HCCC 529 of 2004 was dismissed by this court on 29th June 2005. Miss Migiro expressed her surprise in that counsel who has raised this Preliminary Objection had participated in HCCC 529 of 2004 and he is aware that it was struck out and therefore this Preliminary Objection is mischievous. She produced the said ruling which was delivered on 29th June 2004 whereby the plaintiff’s suit was struck out for being incompetent suit.

For the reasons above stated the defendants’ Preliminary Objection raised herein is dismissed with costs to the plaintiff.

Dated at Nairobi this 15th day of March 2007.

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J.L.A. OSIEMO

JUDGE