



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

Civil Case 1335 of 2003

1. Land and Environmental Law Division
2. Civil Practice and Procedure
3. Application to have court disqualify itself
4. Subject of main suit:- Land Sale Agreement

Reasons:-

- a) Applicant in main suit bought land
- b) Edward K. Kimuhu purports to act for other applicants
- c) Non compliance of Order 1 r 12 Civil Procedure Rules
- d) Ransley J. gives 14 days to comply
- e) Respondent/defendant applies for striking out other plaintiff
and dismissal of suit
- f) Court calls for all related files due to multiplicity of suit
- g) Parties and court agree the best way forward is to hear main suit
on 6-6-2007
- h) Edward K. Kimuhu filed application for disqualification of suit by Judge
- i) Opposition by Respondent

6. **Held:**

- i) The applicant appears in person.

7. Case Law
8. Advocate

Edward Kimuhu – Plaintiff No.1in Person

Edith Gathoni – Plaintiff No.6. – Present

John Gathangu

Kimani Kithia (Weru Wamuthurwa investments – director -1st Defendant – present

R. Kinuthia (Rumba Kinuthia Advocates) (for 3rd Defendant (present) for
Karagita Self Help Mixed Group).

2nd Defendant – Absent

4th Defendant - Chief Land Registrar - absent

EDWARD K. KIMUHU

GEORGE MURUA MUINANIA

PETER NDONYE NGUGI

JOHN GATHUNGA

JANE NDUTA MURIUKI

MONICA WANGECHI

LYDIA WANJIRA KANGETHE

EDITH GATHONI KARIUKI

JOHN NGUNJIRI WAIGWA

ISAKA KIMANI

JOHN KIMONI KINYENJE

MERCY MUTHONI

MARY WAIRIMU KAMIRI

DOUGLAS GITHIAKA MBUGUA

MERCY NYAMBURA KARANJA

GRACE WAMBUI MBURU

LABAN GICHAANA NJOROGI

STEPHEN NDUNGU NGURE.....PLAINTIFFS

VERSUS

WERU WA MUTHURWA INVESTMENTS CO. LTD.....1ST DEFENDANT

THIKA RIVER ESTATE LTD.....2ND DEFENDANT

P. MBURU NGUGI, NG'ANGA NYOIKE HOSEA

M. MWIKA T/A KARAGITA SELF HELP MIXED GROUP.....3RD DEFENDANT

CHIEF LAND REGISTRAR.....4TH DEFENDANT

RULING NO. 3

I. Background of application 14.5.2007

1. The application before court seeks orders that this suit be referred to a different Judge. It is brought under section 3A of the Civil Procedure Act and all enabling provisions of the law”
2. The main suit concerns land whereby the applicant and others bought land but were not put in possession and or were evicted out of the suit land.
3. No doubt there was multiplicity of suits.
4. One Edward K. Kimuhu purports to act for other plaintiff but failed to comply with order 1 r 12 Civil Procedure Rules. Ransley J. on hearing a preliminary objection in the year 2004 on this point that the plaintiff had no authority to file suit, ordered that the said Edward K. Kimuhu to have other plaintiffs accordingly file such authority within 14 days, failure to, he should proceed with the main suit alone.
5. The said Edward K. Kimuhu failed to comply with the orders. When an application was filed by the defendants, this court noted there was multiplicity of suits. It ordered that the files be brought up and a list of such be duly prepared by the defendants.
6. It was further agreed by parties that this present suit proceed to the main trial on 6 June 2007 whilst the Notice of Motion seeking the striking out of the plaintiff be withdrawn. The defendant kindly withdrew the application (though they were suspect on the list filed of 7 June 2004 giving the plaintiff authority to file suit by other plaintiffs).

II. Application 8 May 2007

7. The plaintiff then filed this application of 8 May 2007 under certificate of urgency, that this matter be heard by a different Judge as he has discovered that this court had heard one of the many multiplicity cases herein.
8. The defendant/respondent objects. They had in good faith withdrawn their application querying the locus of the plaintiff. The parties had agreed to go for trial on the main suit. It therefore was in court for the applicant Edward K. Kimuhu to file such application. There are many Judges who have heard the various cases.

III. Findings

9. There are multiplicity of suits in this case. In order for the real issues in question to be determined this suit must proceed for trial.

10. Although there are various cases the parties are different, in that, the plaintiffs were never party to those suits. The applicant herein acts in person being a former chief. He may not appreciate the issues in question for determination.

11. His “concise grounds” to this application also is that the other plaintiff ought not to come to court as he has authority to represent them.

IV. Holding

13. I have heard this application on its merits. Nonetheless I would find that it has no substance. The reasons being is that the issue is not of representation of the applicant nor that this court has heard the suit by the parties which it has not, the issue for determination before the court concerns a sale agreement between the plaintiff and defendant and that of land ownership.

14. I hereby dismiss the application herein as having no merits. That this suit does proceed for trial on 6 June 2007 at 9.00 a.m. as agreed by the applicant before this court under his own violation.

15. There will be costs to the defendants/respondent.

Dated this 22nd day of May 2007 at Nairobi.

M.A. ANG’AWA

JUDGE

Advocates:

Edward Kimuhu – Plaintiff No.1 in Person

Edith Gathoni – Plaintiff No.6. – Present

John Gathangu

Kimani Kithia (Weru Wamuthurwa investments – director -1st Defendant – present

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