



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 263 of 2006

1. Land and Environmental Law Division

2. Subject of main suit land

LR8669/3

4296 acres

a) Plaintiff lease land from defendant

b) Defendant 1,2,3 and 4 entered into sale agreement of suit

property

c) Seeks orders of injunction and

d) Specific performance of lease agreement of 1 May 2007

e) Injunction – not granted by Visram J (6 March 2007) because the

plaintiff were not in existence when the lease was entered into.

3. Application of 14 April 2007

a) That the plaintiff suit be struck out.

Reasons:- at time suit filed they were not in existence

b) Plaintiff had no locus standi

4. In reply:

a) Striking out is draconian

b) Lease agreement can be expressed or implied

5. Held

Suit be strike out

6. Case law - Nil

7. Advocates

D.M. Munge & Co. Advocates for 1st and 5th defendants/applicants – present

B.W. Kariuki holding brief for P.A Kingara & Co. Advocates for the 6th defendants – absent

B.W. Kariuki for F.F. Bosire Bome & Co. Advocates for 2nd,3rd and 4th defendants – present

WHEAT & BARLEY FIELDS LIMITEDPLAINTIFF

VERSUS

RUTH DAMARIS WAMBUI MBIYU1ST DEFENDANT

DAVID NJUNU MBIYU2ND DEFENDANT

MARGARET NJERI MBIYU 3RD DEFENDANT

EDDAH WANJIRU MBIYU 4TH DEFENDANT

ISAAC NJUNU MBIYU5TH DEFENDANT

IMPULSE DEVELOPERS LIMITED.....6TH DEFENDANT

RULING

I: Background

1. Wheat and Barley Files Ltd, is a limited liability company. They have been in possession of the suit premises known as LR. No.86669/3 main Narok Nakuru consisting of 4296 acres. Their lease was entered into with the administratrix of the estate of the late Mbiyu Koinange represented by the 1,2,3 and 4 defendants which effect from 1 May 2005 for 3 years.

2. The plaintiffs discovered that the defendants had entered into a sale agreement to sell the suit land to the 6th defendant - Impulse developers Ltd. They filed a suit for injunction to restrain the defendants form evicting them from the premises. In an application for an injunction by way of chamber summon they were heard by Visram J. It transpired that the plaintiffs had entered into a lease agreement before the said company was incorporated and or come into existence.

3. That as a result the Hon. Judge declined to give any injunction and dismissed the same.

4. What was left was the main suit that sought prayers for injunction the same as in the application.

5. The advocate for defendant 2, 3 and 4 filed this present application of 14 July 2007 seeking to strike out his plaint.

II: Application 14 July 2007

6. Relying on Visram J ruling of 6 March 2007 the defendant prayed that this suit be struck out as there was nothing left.

7. In reply the plaintiff states it is draconian to struck out the suit. They did not deny that they were not in existence at the time of entering the said lease.

III: Finding

8. I find that the plaintiff were not in existence when they entered into a lease with the defendants. They therefore had no locus standi to enter into any agreement and thus to file this suit.

9. I accordingly uphold the application and duly strike out this suit with costs to the defendants.

Dated this 31st day of July 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

D.M. Munge & Co. Advocates for 1st and 5th defendants/applicants – present

B.W. Kariuki holding brief for P.A Kingara & Co. Advocates for the 6th defendants – absent

B.W. Kariuki for F.F. Bosire Bome & Co. Advocates for 2nd, 3rd and 4th defendants – present