



REPUBLIC OF KENYA



KENYA LAW
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**Samura Engineering Limited v Hussein & 8 others (Environment & Land Case
E002 of 2021) [2022] KEELC 15057 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15057 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E002 OF 2021
A NYUKURI, J
NOVEMBER 23, 2022**

BETWEEN

SAMURA ENGINEERING LIMITED PLAINTIFF

AND

ABDI AZIZ HUSSEIN 1ST DEFENDANT

EDWARD KAMUTU 2ND DEFENDANT

MUZAMIL PHARMAACEUTICALS LTD 3RD DEFENDANT

BONIFACE MUTISYA NGUYU 4TH DEFENDANT

CHIEF LAND REGISTRAR 5TH DEFENDANT

DIRECTOR OF SURVEY 6TH DEFENDANT

COUNTY GOVERNMENT OF MACHAKOS 7TH DEFENDANT

ATTORNEY GENERAL 8TH DEFENDANT

**DIRECTOR, DIRECTORATE CRIMINAL INVESTIGATION
DEPARTMENT 9TH DEFENDANT**

RULING

Introduction

1. The application before court is a chamber summons dated June 21, 2021 filed by the 7th defendant seeking the following orders;
 - a. The plaintiffs suit as against the 7th defendant herein be struck out.
 - b. Costs of this suit and the application be awarded to the 7th defendant



2. The application is anchored on grounds on its face as well as the affidavit sworn by James Kathili the County Attorney of the County Government of Machakos who are the 7th defendant in this suit. The applicant's case is that the 7th defendant was wrongly joined to these proceedings as they are not necessary parties to the proceedings and that the cause of action can be effectively and completely settled without involving the 7th defendant. They also stated that the dispute herein involves ownership of LR no 12715/13108 as between the plaintiff and the 1st to 4th defendants.
3. According to the applicant, they do not deal with issuance of title and therefore that the pleadings do not disclose any reasonable cause of action against them. The applicant insisted that they are strangers to the issues in dispute and have no knowledge or interest in the suit property.
4. Although the plaintiff in their submissions indicated that they filed a response to the application arguing that their application was unmerited, no such response was on record.
5. The application was canvassed by written submissions. On record are submissions by the 7th defendant/ applicant filed on February 14, 2022 and the plaintiff submissions filed on June 2, 2022.

Submissions

6. Counsel for the 7th defendant/applicant submitted that the dispute before court is on ownership of land between the plaintiff and the 1st to 4th defendants. That the prayer sought as against the 7th defendant being prayer "F", is for cancellation of title deeds issued to the 1st to 4th defendants. Counsel argued that the 7th defendant has no mandate to cancel title deeds as that was the preserve of the 5th defendant who is the chief land registrar.
7. It was counsel's view that the 7th defendant was not a necessary party to the suit. Reliance was placed on order 1 rule 2 of the *Civil Procedure Rules*, order 2 rule 15(1) and (2) of the *Civil Procedure Rules* and the cases of *Temple Point Resort vs Accredo AG and 5 others* (2018)eKLR and *Peter Irungu Wainaina vs Chege Njibia & 2 others* (2018)eKLR for the proposition that where a party is not a necessary party to any proceedings, the court may order the name of such party to be struck out.
8. Counsel for the plaintiff submitted that paragraphs 34 and 35 of the plaint demonstrated that there is a cause of action as against the 7th defendant, as the 7th defendant colluded with the 1st, 2nd, 3rd and 4th defendants to defraud the plaintiff of their property by purporting to issue an approval for subdivision of the suit property without consent and by creating a rates account for the resultant illegal subdivided portions of the suit property. Besides, counsel pointed out that prayer "F" of the plaint was specifically against the 7th defendant.
9. It was further contended for the plaintiff that the 1st to 4th defendants relied on rates demand notices from the 7th defendant, yet the only person who ought to be issued with such notices is the property owner and in this case the plaintiff. Counsel faulted the alleged actions of the 7th defendant of issuing demand notices to two different persons in respect of the same property, yet one property cannot have two different rateable owners.
10. In placing reliance on the case of *Civicon Limited vs Kivuwatt Limited and 2 others* (2015)eKLR for the proposition that the 7th defendant was a necessary party to these proceedings. Counsel also referred to the case of *Kenya Anti-corruption Commission vs Lucy Kembo Ogeto* (2010)eKLR for the proposition that any person against whom any right to relief is demonstrated, may be sued as a defendant. Counsel also referred to the case of *Mungai Ngamiya vs Boniface Muindi Muli and 5 others* (2021)eKLR and argued that in similar circumstances involving the plaintiff herein and the 7th defendant, who was the 4th defendant in the suit, the court found that the plaint had disclosed a reasonable cause of action



against the County Government of Machakos on account of their role in issuing demand notices for payment of rates to persons, the plaintiffs claimed were not owners of the suit property.

Analysis and determination

11. I have carefully considered the application, the plaint and the submissions. The issue that arise for determination is whether the plaint discloses a reasonable cause of action as against the 7th defendant.
12. Order 2 rule 15 of the [Civil Procedure Rules](#) provides for the power of the court to strike out pleadings as follows;
 1. At any stage of the proceedings the court may order to be struck our or amended any pleadings on the grounds that;-
 - a. It discloses no reasonable cause of action or defence in law; or
 - b. It is scandalous, frivolous or vexatious; or
 - c. It may prejudice, embarrass or delay the fair trial of the action; or
 - d. It is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgement to be entered accordingly as the case may be.
 - (2) No evidence shall be admissible on an application under subrule (a) but the application shall state concisely the grounds on which it is made.
 - (3) So far as applicable, this rule shall apply to an originating summons and a petition.
13. Essentially, where a pleading fails to disclose a reasonable cause of action or defence, the court has discretion to strike out such pleading. The applicant is not required to provide any evidence to demonstrate that the pleading does not disclose a reasonable cause of action or defence. It ought to be clear from the pleading that the pleading does not demonstrate that a party has a reasonable claim or defence against the other, as the case may be.
14. My understanding of the provision of order 2 rule 15 (1) (a) and (2) is that the pleading on the face of it should lack a reasonable claim or defence for it to meet the threshold for striking out. Where explanations must be given on contested matters to demonstrate why the pleading does not meet the threshold of a reasonable claim or defence, then such pleading ought not be struck out. A cursory look at the pleading should suffice in demonstrating lack of a reasonable cause of action
15. In the instant application the Applicant contends that they do not within their mandate cancel title deeds and therefore the prayer against them does not disclose a reasonable cause of action.

In a rejoinder, the respondent argues that the applicant issued demand notices for rates to persons who are not rateable owners of the suit property, therefore purporting to grant legitimacy to the 1st to 4th defendants claim over the suit property. The plaintiff relies on paragraph 34 and 35 of the plaint as the basis of their claim against the 7th defendant.
16. Having perused the plaint, I note that the plaintiff has stated several grievances against the 7th defendant, among them unlawfully creating rates accounts for the purportedly unlawful subdivisions [paragraph 21 (e)] and that changes of the suit property were done at Mavoko sub county, which changes were fraudulent and unlawful (paragraph 34). The plaint faulted the 7th defendant's action of flouting the laws governing subdivision of the suit property and acting on forged documents by the 1st to 4th defendants. The prayer sought by the plaintiff against the 7th defendant is for an



order to unconditionally cancel/rectify records in respect of subdivisions created in respect of LR nos 12715/14501/14515 and LR no 12715/14481 – 14493.

17. In my view the grievances enumerated by the plaintiff against the 7th defendant of unlawfully creating rated accounts for unlawful subdivisions and flouting laws governing subdivision by acting on purportedly forged documents, demonstrate disclosure of a reasonable cause of action which ought to be allowed to be heard on merit.
18. In the premises, I find no merit in the 7th defendant's application dated June 21, 2021 and the same is dismissed with costs to the plaintiff/respondent.
19. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 23RD DAY OF NOVEMBER, 2022 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A NYUKURI

JUDGE

In the Presence of;

Ms Wanja for plaintiff.

Ms Nzili holding brief for Mr Munyao for applicant

Mr Mohamed holding brief Mr Lessogor for 3rd defendant

Ms Grey for County Government of Machakos

Mr Mugo for interested parties

Court assistant – Josephine

