



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

Civil Case 651 of 2006

1. Land and Environmental Law Division
2. Subject of main suit:
 - a) Fraud
 - b) Declaratory suit that original title LRLoc.3/Karura/377 was fraudulently sub-divided to 1st and 2nd defendant
 - c) That vacant possession be given.
3. Application dated 13.4.06 by defendant
 - a) That suit be struck out as being defective
 - b) Particulars of fraud as required under order 6 r 8 Civil Procedure Rules had not been pleaded
 - c) That the title to land was closed when original owner was alive.
4. In reply – Advocate for plaintiff concedes that the plaint is defective. This may be arrived by amendments.
5. Held – Plaint defective.
6. Advocates:-

Ouko of A.N. Ngunjiri & Co. Advocates for the plaintiff/Respondent

G.M. Muhoro for Muhoro & Co. Advocates for the defendant/applicant

**PETER BIBIA NGANGA (Suing as the Administrator of the estate of
NGANGA BIBAI Deceased).....PLAINTIFF**

VERSUS

REBECCA NJERI MUGO.....1ST DEFENDANT

RULING

1: Background of application dated 13 April 2006 seeking suit to struck out the suit order VI r 13 (1)(b).

1. The plaintiff herein Peter Bibia Nganga filed suit by way of plaint on 22 June 2006 seeking orders on behalf of the estate of his late father Nganga Bibia (deceased) that land parcel LR Loc3/Karua/377 was fraudulently sub-divided to the 1st and 2nd defendants being Rebecca Njeri Mugo and Monica Wanjiru Njeru, illegally and or fraudulently. The said plaintiff therefore prayed that this court declares the said sub-division as being null and void as they were obtained fraudulently by the 1st and 2nd defendant. That the said defendants give vacant possession.

2. The two defendants entered appearance and filed defence. They filed this current application being the subject matter of this suit on 13 April 2006 seeking orders of this court to strike out the said suit as being defective. That the particular of fraud had not been pleaded as required by law. Further that the original title was sub-divided and closed in the life time of the deceased and the issue of fraud does not arise.

3. In reply, the said advocate for the plaintiff/respondent admitted that the plaint is defective and may accordingly be nonetheless amended.

III: Finding

4. This suit arose from the estate of the deceased on Nga'nga Bibia. The said deceased land was discovered by his son and administrator as having been sold in the life time of the deceased but that the sub-division and transfer were fraudulently.

5. Accordingly therefore this asset is listed with the deceased properties. It is then dealt with in the success cause. The interested parties who are the defendant herein are then permitted to be enjoined in the succession cause where a dispute as to the entitlement of a property arises. This is referred to the civil court for hearing by way of an originating summons and not a plaint. Once the originating summons determines the question that arises therein the same is returned to the succession cause case and orders made accordingly.

6. In this suit a plaint has been filed. The particulars of fraud had not been pleaded. The advocate for the plaintiff concedes this had not been done and that the plaint is defective. Nonetheless this, I believe she stated, can be cured by amendments. Despite having the application on the file for a year no attempt to amend the plaint had been made by the plaintiff.

7. Further, as the issue falls under succession law, the only role the civil courts take is to determine the matters in question by way of originating summons under the succession rules prior to confirmation of the grant.

8. I hereby uphold the Preliminary Objection and so struck out this suit with costs to the defendants/applicant.

Dated this 20th day of September 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

Ouko of A.N. Ngunjiri & Co. Advocates for the plaintiff/Respondent

G.M. Muhoro for Muhoro & Co. Advocates for the defendant/applicants