



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

Civil Case 531 of 2005

1. Land and Environmental Law Division

2. Subject of main suit Land

i) Land originally owned by M/s Kenya Co-operative Creameries (in Liquidation).

ii) Vesting orders given to 1st defendant New Kenya

Co-operative Creameries Ltd.

iii) 1st defendant claim by court order vesting properties to it

iv) Loc.3 Gichagiini/T52, T55, T54, T56, T58 and T60 were not part of 1st defendant properties.

v) Suit against 1st defendant be duly strike out.

2. In reply:

i) The plaintiffs were never compensated.

ii) The applicants actually utilized land as cemetery Loc.Gichagiini/311. Premises within compound of 1st defendant.

3. Held: Summary judgment must be made in the clearest term.

4. Case Law- nil

5. Advocate:

Mamicha & Co. Advocates for the plaintiff- present

Gathoga Wairegei & Co. Advocates for the defendant- present

JANE WAMBUI KARANJA (Suing as the legal Representative

of the estate of Karanja Mwaniki-deceased.....1ST PLAINTIFF

MWANGI MBOGO (Suing as the legal representative

Of the estate of Mbogo Kihara-deceased)..... 2ND PLAINTIFF

JAMES KAMAU THUO3RD PLAINTIFF

KAMAU NJUGUNA4TH PLAINTIFF

SAMUEL MUNORU5TH PLAINTIFF

JOSEPH MWANGI MAINA6TH PLAINTIFF

VERSUS

NEW KENYA CO-OPERATIVE CREAMERIES CO. LTD1ST DEFENDANT

MARAGUA COUNTY COUNCIL2ND DEFENDANT

RULING

1: Application to strike out 1st defendant M/s New Kenya Cooperative Creameries Ltd from suit.

1. The application dated 12 July 2007 seeks to strike out the 1st defendant M/s New Kenya Cooperative Creameries from the suit. This is on the grounds that there existed a Kenya Cooperative Creameries Ltd which is now in liquidation. Their assets of the old company was vested by the High Court to M/s New Kenya Co-operative Creameries Ltd.

2. The respondent plaintiffs filed suit against the applicant 1st defendant and the Maragwa County Council whereby they claimed that certain parcels of land was being held by the County Council and the Kenya Cooperative Creamers which company requested the plaintiff to take out their plots and compensate them. The plaintiff yielded their plots but were not compensated. The plaintiff now sue the new Kenya Co-operative Creameries so that they be compensated.

3. The New Kenya Cooperative Creameries seek leave of this court to be struck out of this suit on the grounds that properties of the Kenya Cooperative Creameries were vested in the New Creameries Cooperative (1st defendant) but that the properties in question and belonging to the 1st – 6 plaintiff do not vest. They therefore have nothing to do with the issue of Corporation. They ask that 1st defendant suit be struck out.

II: Finding.

4. A summary judgment for an application such as in this nature must be made in the clearest term. There must be no doubt. The plaintiff/respondent see their premises used by the 1st defendant/applicant and other properties around. How are they to know that the 1st defendant is not in control when there has been no letter revoking the take over of their property subject to compensation.?

5. The said 1st defendant blames another party for the plaintiff problem. They ought to file 3rd party proceeding under Order 1 r 14 Civil Procedure Rules against the parties whom they claim as responsible for compensation and control of the plaintiffs property.

6. I decline to grant this application. The same is dismissed with costs to the plaintiff/respondent.

Dated his 15th day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

Mamicha & Co. Advocates for the plaintiff- present

Gathoga Wairegei & Co. Advocates for the defendant- present