



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Civil Case 7 of 2007

LAIKIPIA MIFUGO RANCHING CO. LTD.....PLAINTIFF

Versus

NANYUKI RANCHING LTD.....DEFENDANT

RULING

The Defendant's application is by Chamber Summons dated 21st May 2007. That application is brought under *Order VI Rule 13 (1) (b) (d)* of the Civil Procedure Rules. That rule provides as follows:

“At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that:-

(a)

(b) it is scandalous, frivolous or vexatious; or

(c)

(d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

The Defendant by its supporting affidavit stated that although the Plaintiff alluded in its plaint having entered into negotiations to purchase the Defendant's property that it was clear from the leadings that such an agreement was not reduced into writing. That being so the Defendant was of the view that *Section 3(3)* of the Law of Contract Act was not complied with. That section provides as follows:

“(3) No suit shall

Be brought upon a contract for the disposition of an

interest in land unless-

(a) the contract upon which the suit is founded-

(i) is in writing;

(ii) is signed by all the parties thereto; and

(iii) incorporates all the terms which the parties have expressly agreed in one document; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such a party.”

The Plaintiff had moved this Court by an interlocutory injunction application and by this Court’s ruling of 15th June of 2007 the Court made the following findings:

“As can be seen from that section it is paramount before a suit is filed relating to disposition of land that a party bringing such an action ensures that the contract thereof is in writing. Having perused the documents that are relied upon by the Plaintiff, I find that the Plaintiff has not shown that a contract, if any, between itself and its Defendant, was ever reduced in writing.”

The Plaintiff to date has not appealed against that finding. The Court faced with the present application for striking out the plaint where the Plaintiff did not file any grounds of opposition or a replying affidavit and has not sought to challenge the previous findings, the Court finds that the application is merited. In the case of **LYNETTE B. OYEIR, GEOFFREY O. OYIER & ANOTHER V SAVINGS & LOAN KENYA LIMITED CIVIL CASE NO. 891 OF 1996** in dealing with an application to strike out the defence expressed itself as follows:

“The function of the court in its jurisdiction of striking out pleadings under order VI rule 13 of the Civil Procedure rules is not to determine whether the action or defence as framed will or will not succeed at the trial. That is the function of the trial court after hearing evidence and legal submissions. The function of the court under that jurisdiction is to determine whether the pleadings have been formulated in accordance with the established rules of pleading and to impose appropriate sanctions if they have not been so formulated. In other words it is the soundness of the pleading itself which is the concern of the court at that stage in the litigation process.”

In considering the plaint hereof and in view of the fact that the Plaintiff has not in response to the present application nor in support of the interlocutory injunction shown to the Court that the agreement for sale, if any, was reduced in writing, I make a finding that this suit is an abuse of the court process and is vexatious. To allow it to continue to subsist serves no purpose in view of the contravention of Section 3(3) of the Law of Contract Act. The end result therefore is that the Defendant’s application dated 21st May 2007 does succeed and accordingly the Plaintiff’s plaint is hereby struck out. The costs of the suit and the costs of the Chamber Summons of 21st May 2007 are awarded to the Defendant.

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 14th day of November 2007.

By: M. S. A. MAKHANDIA

JUDGE