



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 813 OF 2004

JOSEPH GITAU.....PLAINTIFF/RESPONDENT

ISAAC NJUGUNA MBURU.....PLAINTIFF/RESPONDENT

CECILIA WANJIRU.....PLAINTIFF/RESPONDENT

**(Suing on behalf of 100 others Members of
WILSON MITUMBA WOMEN GROUP)**

VERSUS

UKAY ESTATE LIMITED..... DEFENDANT/APPLICANT

RULING

The defendant's application by Chamber Summons was dated and filed on 30th March, 2005. It was brought under Order VI, rule 13 (1) (b), (c), (d) of the Civil Procedure Rules, and s. 3A of the Civil Procedure Act (Cap 21). The defendant's prayers were, firstly, that the Plaintiffs' amended plaint of 27th July, 2004 (filed on 25th January, 2005) be struck out and/or dismissed with costs; and secondly, that the costs be borne by the plaintiffs.

The application is premised on the grounds that the amended plaint is scandalous, frivolous or vexatious; that the same may prejudice, embarrass or delay the fair trial of the suit; that the amended plaint is otherwise an abuse of the process of the Court; that no useful purpose will be served by taking the amended plaint through the motions of trial.

Evidence in support of the application is in the affidavit of *Atulkumar Shah* dated 30th March, 2005. The deponent, who is a Director of the defendant, avers that the plaintiffs are not the legal or beneficial owners of the suit property, L.R. No.209/12527. The defendant has a valid title to the suit property registered at the Land Titles Registry as Grant No. I.R.68106 dated 8th January, 1996. It is deposed that, at all material times the defendant has been the lawful proprietor of the suit property, and in that capacity the defendant possess the rights and interests accruing from such proprietorship, including using the suit property for any purpose as the defendant deems fit. It is averred that the Plaintiffs lack the capacity to institute this action. Annexed to the affidavit is a letter from the Provincial Director of Social Services, Nairobi Area, on the status of the Plaintiffs. The letter, addressed to M/s Ondieki & Ondieki Advocates and dated 1st December, 2004 reads:

“This office cannot furnish you with any information regarding the above group [i.e Wilson Mitumba Women Group] because we do not have the reference number of their certificate or any other document”.

It is deposed that the defendant has always been paying land rents and rates, in respect of the suit property.

On the 9th of May, 2005 the Plaintiffs filed a notice of preliminary objection, and on the 16th of May, 2005 one of them, Joseph Mburu Gitau filed a replying affidavit. He avers that he is the chairman of an organization known as Wilson Mitumba Women Group, which was registered on 28th December, 1988 under the Ministry of Culture and Social Services. Yet another registration, it is deponed, was obtained in 2005 under the Ministry of Gender, Sports, Culture and Social Services. The deponent attaches a “Certificate of Local Self –Help (Harambee) Group Organization Nairobi Area”. It is dated 28th December, 1988, signed by the Provincial Director of Social Services, Nairobi Area. The Certificate states that the group —

“is registered with the office of Provincial Director of Social Services Nairobi Area as a harambee self-help group. By this registration the group is entitled to engage in Social Development group activities for the welfare of its members under the supervision of the office of Provincial Director of Social Services, Nairobi”.

A similar certificate issued to the group by the Ministry of Gender, Sports, Culture and Social Services, dated 16th March, 2005 and signed by the Provincial Director of Social Services, Nairobi Province, states that it is registered —

“with the office of the Provincial Director of Social Services ... as a Self-Help Group/Organization. This certificate entitles the Group to engage in Social Development Activities under the supervision of Provincial Director of Social Services, Nairobi”.

The deponent avers that the group’s registration is recognized in law, and it is on that basis that the Ministry responsible has allowed it to establish and hold a bank account. The deponent deposes that the suit property is owned by plaintiffs and not by the defendant.

On the occasion of hearing, on 22nd June, 2005, the defendant/applicant was represented by *Mr. Odera*, while the plaintiff/respondent was represented by *Mr. Mutua*. *Mr. Odera* submitted that the fact that the defendant was the valid proprietor of the suit property was evidenced by its title, I.R. No.68106 being also L.R. No.209/12527, as contracted with a competing but defective title held out by the plaintiffs which had no authentic I.R. number.

The defendant’s competing title is issued in the name of “WILSON MUTUMBA WOMEN GROUP”; and learned counsel submitted that such an entity has no capacity to hold title to property. Counsel submitted that proceedings brought by such an entity amounted to an abuse of process.

The suit, *Mr. Odera* submitted, was scandalous. And a scandalous suit has been typified by Sir Jack Jacob in his work, *Pleadings: Principles and Practice* (London: Sweet & Maxwell, 1990), p.221:

“Allegations in a pleading are scandalous if they state matters which are indecent or offensive or are made for the mere purpose of abusing or prejudicing the opposite party. Moreover, any ‘unnecessary’ or ‘immaterial’ allegations will be struck out as being scandalous if they contain any imputation on the opposite party or make any charge of misconduct or bad faith against him or anyone else”

Learned counsel submitted that the suit was frivolous, which means according to Sir Jack Jacob (*op. cit.*, pp 222 - 223):

“A pleading or an action is frivolous when it is without substance or unarguable.

“Thus, a proceeding may be said to be frivolous when:

- (a) a party is trifling with the court; or**
- (b) when to put it forward would be wasting the time of the court; or**
- (c) when it is not capable of reasoned argument; or**
- (d) it is without foundation; or (e) where it cannot possibly succeed; or**
- (f) where the action is brought or the defence is raised only for annoyance; or**

(g) to gain some fanciful advantage; or

(h) when it can really lead to no possible good”

Counsel contended that the suit was vexatious, which means according to Sir Jack Jacob (op. cit, at p. 233):

“A pleading or an action is vexatious when it lacks bona fides and is hopeless or oppressive and tends to cause the opposite party unnecessary anxiety, trouble and expense”

Relying on the foregoing principles, which are also applied in two High Court cases, Lynette B. Oyier & Others v. Savings & Loan Kenya Ltd, Civil Case No. 891 of 1996 and Kenya Commercial Bank Ltd v. Muturi, Gakuo & Co., Advocates, Civil Case No.591 of 2003, learned counsel urged that the plaint be struck out with costs to the defendant.

Learned counsel, **Mr. Mutua**, submitted that the fact that two title documents existed for the same property and in the respective names of each of the parties, was evidence that the suit was not frivolous or scandalous. Counsel submitted that it was not true that the plaintiffs lacked capacity to sue in their own names, as leave had been granted by the Court on 28th July, 2004 for commencement of a representative action by the Plaintiffs. **Mr. Mutua** urged that the defendant’s application be dismissed with costs.

In his rejoinder, learned counsel, Mr. Odera stated that the defendant was not doubting the fact that leave had indeed been given for a representative suit by the plaintiff; but he submitted that the plaintiff “group”, which lacked corporate status, could not be the holder of title documents for land, and if such a body were to own land, it could only hold title to it through trustees or through registered officials.

The defendant has exhibited a copy of its document of title for the suit land, L.R. No.209/12527 and Grant No. I.R. 68106 issued for a term of 99 years from 1995. The defendant has also exhibited payment receipts proving that it has always paid land rents and rates in respect of the suit land.

Then the plaintiffs come along with another, competing set of documents purporting to show that the same suit land, bearing the same L.R. Number 209/12527 though different I.R. Number, 69486 is the property of a body known as WILSON MUTUMBA WOMEN GROUP, a group that is not a corporate body though it holds the property directly in its own name. The plaintiffs annex to the replying affidavit a “CERTIFICATE OF LOCAL SELF-HELP (HARAMBEE) GROUP ORGANIZATION NAIROBI AREA”, from the Provincial Director of Social Services — and this is the only indicia of “juridical status” being shown.

To its application and supporting affidavit, the applicant has attached a letter from the Chief Land Registrar Ref. No.CLR/A/39/VOL.VIII (21) dated 1st October, 2004. This letter may be quoted, in view of its importance in determining the bone fides of the suit:

“Your letter ref. DO/29/09/04 dated 29th September, 2004 has been placed before me together with the copies of Grants Number I.R 69486 for L.R. No.209/12527 and I.R 68106 for L.R. No. 209/12527. According to my records:

(i) L.R. No.209/12257 was registered in this Office as Grant No. I.R. No.68106 on 8th January, 1996.

(j) L.R. No.209/11273/13 was registered in this Office as Grant No. I.R. 69486 on 10th June, 1996.

“The copy of Grant No. I.R. 69486 for L.R. No.209/12527 which you have enclosed is not part of our records.

“Enclosed please find a certified copy of search form 198/2004”.

The Chief Land Registrar's letter was addressed to M/s. Ondieki & Ondieki, the advocates then acting for the defendant.

Is it permissible that a body of no true juridical status, "Wilson Mutumba Women Group" can come to Court wielding a land title in its own name? That would defeat the recognized mode of legal reasoning.

Although the frontiers of legal ingenuity, in the creation of legal personality, may not yet be completely exhausted, it takes weighty legal argument to demonstrate that the said "Wilson Mutumba Women Group" has validly become the registered owners of the suit land. Learned counsel for the plaintiffs, however, was, and with much respect, distinctly laconic in his submissions on the applicable law on juristic status. I think the Plaintiffs do not win on this ground, and it is the defendant's contentions that carry validity.

The defendant took further action by having a search conducted, with the Chief Land Registrar addressing in writing the apparent conflict in title-claims. And the outcome is that the plaintiffs' title is unknown to the Lands Office.

Then, how can such a claim of land-title not shown to carry bona fides, be a valid and proper basis for moving this Court? I must, with respect, agree with counsel for the defendant, that the suit is scandalous, frivolous and vexatious, and an abuse of the process of the Court. The Court's time and resources are finite, while the demands legitimately made on the same by suitors is utterly stupendous. The plaintiffs' suit is, with respect, a waste of such precious resources.

I therefore, hereby strike out the plaintiffs' amended plaint of 27th July, 2004 with costs to the defendant.

Orders accordingly.

DATED and DELIVERED at Nairobi this 22nd day of July, 2005

J.B. OJWANG

JUDGE

Coram: Ojwang, J.

Court Clerk: Mwangi

For the Plaintiffs/Respondent: Mr. Mutua, instructed by M/s. Njeru, Nyaga & Co.,

Advocates

For the Defendant/Applicant: Mr. Odera, instructed by M/s. Odera Obar & Co. Advocates.