

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Suit 30 of 2005

MUGO MATHAI.....PLAINTIFF

VERSUS

JOSHUA K. KANGOGO.....1ST DEFENDANT

LAWRENCE K. KIBET.....2ND DEFENDANT

RULING

The plaintiff is the registered proprietor of a parcel of land known as **KAMPI YA MOTO/KAMPI YA MOTO BLOCK 3/158** measuring 2.023 hectares.

He filed suit against the defendants alleging that they had unlawfully trespassed thereon and began to cultivate the land. He prayed for evocation orders against them as well as an order for payment of damages for trespass. The defendants filed a joint statement of defence through M/S Kiage & Co. Advocates. They admitted having entered into the plaintiff's aforesaid property but denied that their entry and occupation was unlawful and without the plaintiff's knowledge. They alleged that they were in possession as purchasers, having bought the land from M/S Mugai Commercial Agencies Ltd, having sold the same for and on behalf of the plaintiff as his duly authorised agent. They did not state when they bought the land and for how much and neither did they give any other particulars of the alleged transaction. They urged the court to dismiss the plaintiff's suit with costs.

On 13th June, 2005, the plaintiff filed an application under Order VI Rules 13(1) (b) (c) and (d) and 16 of the Civil Procedure Rules urging the court to strike out the defence for being frivolous and meant to delay a fair disposal of the suit and also being an abuse of the court process.

The application was served upon the defendants' advocates who acknowledged service of the same by way of stamping on the duplicate copy thereof which was filed in court together with an affidavit of service. However, the defendants did not file any response to the plaintiff's application.

Order VI Rule 4(2) requires a defendant to an action for the recovery of land to plead specifically every ground of defence on which he relies. Rule 4(1)(a) requires a defendant to plead specifically any aspect which he alleges makes any claim not maintainable in law. In this matter, the defendants did not allege that the plaintiff entered into any lawful agreement with them. They said that they purchased the suit land from the plaintiff's alleged agent. I would have expected them to state the exact date of the alleged agreement, the purchase price, how and when consent of the area Land Control Board was obtained and so on. They did not do so. Having admitted that they were in occupation of the suit land which I would have expected to be registered in their names had they lawfully purchased the same but having failed to make any specific pleadings as would have shown that their defence was a valid one, I hold that their defence is frivolous and vexatious and an abuse of the court process. It is otherwise calculated to delay the finalisation of the plaintiff's suit. I strike out the defence with costs to the plaintiff.

DATED, SIGNED AND DELIVERED at Nakuru this 9th day of December, 2005.

D. MUSINGA

JUDGE

9/12/2005