



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO.1289 OF 2002**

**PAUL MUIRA.....1ST PLAINTIFF**

**RUTH WANGUI MUIRA.....2ND PLAINTIFF**

**V E R S U S**

**JANE KENDI IKINYUA.....1ST DEFENDANT**

**NAIROBI CITY COUNCIL .....2ND DEFENDANT**

**CHIEF LAND REGISTRAR .....3RD DEFENDANT**

**R U L I N G**

This is Chamber Summons dated 3.4.2003 made under Order 6 Rule 13(1) (a) asking for order that Plaintiff's claim as against 1st Defendant vide Plaint dated 30.7.2002 be struck out as it discloses no reasonable cause of action on grounds that Plaintiff seeks to challenge a first registration contrary to Section 143 of the Registered Lands Act Cap 300.

Section 143 (1) says: -

**“Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.**

**(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default. “**

What this section means is that the Court can rectify entries in a land register when it is a result of a fraud or mistake, except when it is a first registration; again where there is a proprietor in possession. From the wording of this section, it appears to me that an argument has to be rendered whether or not a first registration is subject to or qualified by Section 143(2) so as a fact that ought to be shown to exist, and whether then fraud if proved can affect registration. But I have looked at the Plaint and heard Mr. Kalikumi in his reply. He says the application cannot succeed because there is a consent order reached earlier before Hon. Kuloba J., which granted interlocutory injunction restraining Defendants from alienating, mortgaging or transferring the suit property until the hearing of the suit. He says Plaintiff must have conceded that there is a reasonable or prima-facie case. He is now estopped from stating otherwise. Secondly, he says this was second registration as first one was to City Council of Nairobi.

A reasonable cause of action means a cause of action with some chance of success. When all the allegations in the pleading are considered so long as some cause of action exists in the claim, even if it looks weak and unlikely to succeed but one possibly triable or fit to be tried by Court it ought not to be struck out.

There is in this case the issue of first registration. This cannot be decided on until evidence is led to show as a fact whether there was or there was not that first registration. The case whether the register is rectifiable and whether fraud if proved will be effective is therefore, triable. In principle, therefore, it

cannot be struck off.

Application disallowed.

DATED this 20th day of June 2003.

**A.I. HAYANGA**

**JUDGE**

**Read to Mr. Nyaga for Respondent**

**No appearance for Applicant**

**A.I. HAYANGA**

**JUDGE**