Okasiaka v Manyuru (Sued as the Leg. Rep. of Joseph Manyuru Iwuoni) & 5 others (Environment & Land Case 33 of 2017) [2024] KEELC 3695 (KLR) (2 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3695 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ENVIRONMENT & LAND CASE 33 OF 2017

BN OLAO, J

MAY 2, 2024

BETWEEN

CHARLES OBOTI EMAI (SUING ON HIS BEHALF AND AS THE LEG. REP. OF JOSPEH OBOSE OKUMA & VINCENT EMAYI OKASIAKA) ..... PLAINTIFF

AND

JOHN OKWARE MANYURU (SUED AS THE LEG. REP. OF JOSEPH MANYURU IWUONI) ..... 1ST DEFENDANT

PETER MANYURU IWUONI ..... 2ND DEFENDANT

MOSES OKWARE OPARI MANYURU ..... 3RD DEFENDANT

JOSEPH MUSANGO AYUYA ..... 4TH DEFENDANT

BENEDICTOR NAMBILI MUHATIA ..... 5TH DEFENDANT

VINCENT ODUOR WARINGA ..... 6TH DEFENDANT

RULING

1. Charles Oboti Emai (the Plaintiff herein and suing as the legal representative of the Estate of JOseph Obose Okuma & Vincent Emayi Okasiaka) approached this Court vide his amended plaint dated 31st October 2022 in which he impleaded the following:

    1. John Okware Manyuru (sued as the legal representative of the Estate of Joseph Manyuru Iwuoni) – 1st Defendant;

    2. Peter Manyuru Iwuoni – 2nd Defendant,

    3. Moses Okware Opari Manyuru – 3rd Defendant,

    4.. Joseph Musango Ayuya – 4th Defendant,

5. Benedictor Nambili Muhatia – 5th Defendant; and

6. Vincent Oduor Waringa – 6th Defendant.

He sought judgment against the Defendants in the following terms with regard to the land parcel No South Teso Amukura/456 now divided to give rise to the new land parcels No South Teso/amukura/3175 and 3176 (the suit land) in the following terms:

a. An order directing the County Land Registrar to strike out the names of Joseph Manyuru Iwuoni and Joseph Musango Ayuya from the register of the land parcel No South Teso/amukura/456 and also to cancel the sub-division of the land parcel No South Teso/amukura/456 into the new land parcels No South Teso/amukura/3175 and 3176 and to restore the said parent suit parcel of land to it's original status as at 19th June 1974.

aa) A declaration that the deceased Joseph Obose Okuma and all the Defendants held and continue to hold title to land parcel No South Teso/amukura/456 as sub-divided into South Teso/amukura/ 3175 and 3176 in trust for Vincent Emayi Okasiaka as represented by the Plaintiff.

b. An order directing the rectification of the register of the land parcel NO SOUTH Teso/amukura/456 after restoration as per prayer (a) above by striking out the names of all the Defendants from the register and directing that the Plaintiff be registered as proprietor of the said parcel of land.

c. General damages.

cc) An Order directing the 2nd and 3rd Defendants to refund to the 5th and 6th Defendants the money, if any, which they received from the 5th and 6th Defendants as the purchase price for the portions of land that they had created from the land parcel No South Teso/amukura/456.

d. A permanent injunction restraining the Defendants, their agents, servants or their families howsoever from alienating or continuing in cultivation and interfering with the Plaintiff's possession and use of the land parcel No South Teso/amukura/456 presently described with new numbers to wit South Teso/amukura/3175 and 3176.

e. Costs of the suit.

f. Interests.

g. Any other or further relief.

2. For purposes of this ruling, I shall not set out the basis of the Plaintiff's claim in full details. Suffice it to state that the Plaintiff pleaded that at all material time, the land parcel No South Teso/amukura/456 was ancestral land registered in the name of Joseph Obose Okuma to hold in trust for himself and his brother Vincent Emayi Okasiaka both deceased and on behalf of whose Estate the Plaintiff has filed this suit. That the said Joseph Obose Okuma and Vincent Emayi Okasiaka had moved to Uganda to occupy another parcel of land at the time of Land Adjudication. Particulars of that trust have been pleaded in paragraph 4(a) to (d) of the amended plaint. That prior to the move to Uganda, Joseph Oboses Okuma had litigated with the 1st Defendant over the said land parcel No South Teso/amukura/456. That in 2006, the 1st Defendant's family filed BUngoma H.C.C.C No 1 of 2006 claiming to have purchased the land parcel No South Teso/amukura/456 from Joseph Obose Okuma in 1971 at the price of Kshs.4,000 and which suit is still pending. The Plaintiff then checked the records at the Lands Office and discovered that the 1st Defendant's father had on 7th June 2002 been entered in the register as the proprietor of the land parcel No South Teso/amukura/456. Subsequently, the said land had

been registered under the name of one Joseph Musango Ayuya on 28th November 1980. Pursuant to orders issued in Bungoma H.C.C.C. No 11 of 2008, the 2nd and 3rd Defendants having been sub-divided into two portions. It is the Plaintiff's case that all along, the said Joseph Obose Okuma was served of the indefeasible title to the land parcel NO South Teso/amukura/456 and the transfer thereof to Joseph Manyuru Iwuoni and thereafter to Joseph Musango Ayuya was done fraudulently, through misrepresentation and in breach of the law. Particulars of the said fraud, misrepresentation and breach of the law have been pleaded in paragraphs *4*(a), (b), (c) (d) to *14*. That necessitated the filing of this suit by the Plaintiff seeking the remedies enumerated above.

3. The record shows that a defence was filed by Joseph Manyuru Iwuoni, Peter Manyuru Iwuoni, Moses Okware Opari Manyr and Joseph Musangu Ayuya (the 1st, 2nd, 3rd and 4th Defendants respectively) in the suit which was originally filed as BUSIA H.C.C.C. NO. 16 of 2009 before being transferred to this Court. I have been un-able to trace any further defence filed by the Defendants following the amendment of the plaint to include Benedictor Nambili Muhatia And Vincent Oduor Waringa.

4. In the said joint defence, the 1st to 4th Defendants denied that they held any land in trust on behalf of the said Joseph Obose Okuma. The 1st Defendant added that he has been in open occupation of the land parcel No Amukura/TESO/459 (this must be an error because the documents herein describe the land as South Teso/Amukura/456 which was subsequently sub-divided to create the suit land being land parcels No South Teso/amukura/3175 and 3176). The 2nd and 3rd Defendants denied having acquired the titles thereto through fraudulent means adding that the acquisition was done above board. They added that the suit is res judicata or subjudice in view of the suit in Bungoma H.C.C.C NO 11 of 2008 and that at the appropriate time, a Preliminary Objection would be raised to have it struck out. They denied the allegation of fraud levelled against them and pleaded that the Plaintiff who was then Vincent Emayi Okasiaka (now deceased) and suing on behalf of the Estate of Joseph Obose Okuma was guilty of laches as he had failed to defend himself in Bungoma H.C.C.C NO 11 of 2008 where he was a party. The Defendants also pleaded that the Plaintiff has no locus standi to bring this case as he has no interest in the suit land.

5. A reply to the defence was filed by Vincent Emayi Okasiaka (the Plaintiff then) in which he pleaded that he was entitled to the suit land by way of trust. He joined issues with the Defendants and denied their averments.

6. The Defendants have now filed a Notice of Preliminary Objection dated 19th January 2024 and which is the subject of this ruling. They seek that this suit be dismissed with costs on the following grounds:

    1. That the instant matter is res judicata owing to the fact that the issues of proprietorship of the suit properties to with South Teso/Amukura/456, 3175 and 3176 was heard and substantially and conclusively settled in favour of Joseph Manyuru Iwuoni (deceased) in Bungoma H.C.C.C No 11 Of 2008 – Joseph Manyuru Iwuoni -v- Joseph Obose Okuma & Another and the subsequent appeal in the Court of Appeal at Kisumu in Case No 15 of 2010 Joseph Obose Okuma & Another –v- Joseph Manyuru Iwuoni.

    2. That the issues in this suit having already been determined as aforesaid, these proceedings are vexatious, frivolous, scandalous and an abuse of the Court process noting that the only difference is that the instant matter pits the legal representatives of the parties in the previous matters against each other.

7. When the Preliminary Objection was placed before me for directions on 25th January 2024, I granted leave to both parties to file and serve additional documents within 14 days and directed that the same would be canvassed by way of written submissions.

8. Those submissions were subsequently filed by Mr Kinyua instructed by the firm of Wangui Kuria & Company Advocates for the Defendants and by Mr Wanyama instructed by the firm of Wanyama & Company Advocates for the Defendants.

9. I have considered the Preliminary Objection, the Plaintiff's replying affidavit and annextures thereto, the further affidavit of the 2nd Defendant and the annexture thereto as well as the submissions by counsel.

10. There are two issues raised in the Preliminary Objection. These are:

    1. The suit is res judicata.

    2. The suit is vexatious, frivolous, scandalous and an abuse of the process of this Court.

    I will consider them in that order. However, if I confirm that this suit is res judicata, then there will be no need to consider issue NO 2. Before I do so, however, I must first determine whether the issue of res judicata is a proper Preliminary Objection worthy of consideration by the Court.

11. As to what amounts to a Preliminary Objection this was discussed in the case of Mukisa Biscuit Manufacturing CO. LTD -V- West End Distributors LTD 1969 E.A. 696 where Law JA described it as follows:

> " So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded or which arises by clearly implication out of pleadings and which if argued as a Preliminary point may dispose of the suit. Examples are an Objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration".

Newbolp P. in the same case said:

> " A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop."

1. The Suit Is Res Judicata:

12. There is no doubt that a plea of res judicata is a proper Preliminary Objection. It consists of a point of law and that is Section 7 of the Civil Procure Act which provides that:

    7: "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

The term res judicata is defined in Black's Law Dictionary 10th Edition in the following terms:

> " An issue that has been definitely settled by judicial decision. An affirmative defense barring the same parties from litigating a second law suit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been – but was not

raised in the first suit. The three essential elements are (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties."

In the case of Independent Electoral & Boundaries Commission -v- Maina Kiai & 5 others 2017 eKLR, the Supreme Court while considering the said provision held that all the elements outlined therein must be satisfied conjunctively for the doctrine of res judicata to be invoked. That is:

1. The suit or issue was directly and substantively in issue in the former suit.
2. The former suit was between the same parties or parties under whom they or any of them claim.
3. The parties were litigating under the same title.
4. The matter was heard and finally determined in the former suit.
5. The Court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

Res judicata is a complete bar to further litigation over the same subject by parties and their privies. It is in the public interest that there should be an end to litigation. That principle was captured in the case of William Koross -v- Hezekiah Kiptoo Komen & 4 Others 2015 eKLR where the Court of Appeal stated that:

> " The philosophy behind the principle of res judicata is that there has to be finality; Litigation must come to an end. It is a rule to counter the all too human propensity to keep trying until something gives. It is meant to provide rest and closure, for endless litigation and agitation does little more than vex and add to costs. A successful litigant must reap the fruits of his success and the unsuccessful one must learn to let go."

Finally, the same Court addressed the doctrine as follows in the case of John Florence Maritime Services Limited & Another -v- Cabinet Secretary For Transport And Infrastructure & 3 Others 2015 eKLR:

> " The rationale behind res judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res judicata ensures the economic use of Courts limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent Courts. It promotes confidence in the Courts and predictability which is one of the ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unravelling uncontrollably."

The basis upon which the Defendants have invoked the doctrine of res judicata to defeat the Plaintiff's claim is that the dispute involving the suit land was heard and determined in favour of Joseph Manyuru Iwuoni (now deceased and on behalf of whose Estate the 1st Defendant has been sued) in Bungoma High Court Civil Suit No 11 of 2008. That an appeal against the judgment therein was dismissed in the Court of Appeal Kisumu, Civil Appeal No 15 of 2010.

13. I have looked at plaint and judgment in Bungoma H.C.C.C. NO 11 of 2008. The Plaintiffs were Moses Okware Opari and Peter Manyuru Iwuoni -v- Amayi Okumu Kasiaka, James Wandera and John Omongari as Defendants. The Plaintiffs therein were seeking the eviction of the Defendants therein from the land parcels No South Teso/Amukura/3175 and 3176 which is the suit land in this case. The

hearing proceeded ex-parte before A. Mbogholi Msagah J (as he then was) the Defendants having failed to enter an appearance. After hearing the Plaintiffs, in a judgment delivered on 10th February 2009, the Judge found in favour of the Plaintiffs therein and ordered that the Defendants therein be evicted from the suit land.

14. The Defendants therein filed an application seeking to set aside the exparte judgment and for leave to file their defence. That application was heard by F. N. MUCHEMI J who dismissed it with costs vide her ruling delivered on 12th November 2009. An appeal against that ruling was dismissed by the Court of Appeal Kisumu Civil Appeal No. 15 of 2010.

15. However, in opposing the plea of res judicata, counsel for the Plaintiff has submitted at page 2 of his submissions as follows:

> "Once a plea of res judicata is raised, it calls for examination of pleadings, the plea of res judicata ought to have been raised through an application where evidence should have been adduced and properly responded to through a replying affidavit with available opportunities to cross-examine any deponent if need would arise. A Notice of Preliminary Objection should raise pure points of law that could in present instance be determined on the basis of settled facts appearing in the amended plaint dated 31/10/2022 and the statement of defence. The present Notice of Preliminary Objection has been raised on the basis of a bare notice instead of an application which would have been properly accompanied by the supportive evidence documents. The same should be rejected in line with the holding in the following decisions."

Counsel then goes on to cite the following cases:

1. Eunice Karimi Kibunja -v- Mwirig M'ringera Kibunja 1996 eKLR, and
2. Oraro -v- Mbaja 2005 eKLR.

In both the Eunice Karimi Kibunja case (supra) and the case of George Oraro (supra), the Courts simply reiterated what I have already cited above from the case of MUKISA Biscuit Manufacturing Co. Ltd -v- West End Distributors LTD (supra), that a Preliminary Objection must raise pure points of law and not contested matters. In the Eunice Karimi Kibunja Case (supra), The Judge Had Dismissed The Appellant's Suit By Way Of Originating Summons on the basis of a Preliminary Objection that the suit was time barred. In allowing the appeal, the Court found that the issue as to whether or not the suit was time barred clearly needed to be ascertained through a trial.

16. In the George Oraro case (supra), the Preliminary Objection was also dismissed because it was blurred by factual details which required to be proved at the trial.

17. In this case, and as I have already stated above, the Preliminary Objection is founded on the plea of res judicata which is provided for under Section 7 of the Civil Procedure Rules. There can be no doubt that it is a pure point of law.

18. It is also factual, and not an issue that needs to be further ascertained, that the suit land was the subject in both Bungoma H.C.C.C no 11 of 2008 and the subsequent appeal being KISUMU Court of Appeal Civil Appeal No 15 of 2010. It is not suggested that any of the two Courts were not competent to determine the dispute involving the suit land. And although the case in the High Court was heard ex-parte, the subsequent appeal was dismissed on 20th December 2013 by Onyango-otieno, Azangalala and Ole Kantay (JJA). Therefore, the fact that the dispute relating to the suit land was "heard and finally decided" by competent Courts is also not a matter which, as OJWANG J (as he then was) said

in the GEORGE ORARO case (supra), needed any further "evidence for it's authentication." The previous judgments and ruling in the earlier suits and which the parties have openly referred to, speak for themselves.

19. Counsel for the Plaintiff has also submitted that "the plea of res judicata ought to have been raised through and application." A similar Objection was taken in the case of JOHN Florence Maritime Services LTD (supra) to which the Judges responded thus:

> " We are also not aware of any legal edict that an Objection to a suit taken on the basis of res judicata must be so taken on a formal application. The appellants did not cite to us any such authority. In any event, the respondents had in their various pleadings raised the issue and this was long before the hearing of the application and the appellants were therefore put on notice in good time."

Similarly, in this case, counsel for the Plaintiff did not cite any authority for the submission that res judicata can only be raised by way of an application. It can properly be raised through a Preliminary Objection as has happened here. In any event, the plea of res judicata was pleaded in paragraph 7 of the defence as follows:

7: "The 2nd and 3rd Defendants aver further that this suit is res judicata or sub judice and at an opportune time shall raise a Preliminary Objection to have this Court to strike it as the same emanates from the Judgment of Bungoma High Court Civil Suit NO 11 of 2008 where the Plaintiff was a party and refused to defend himself despite having been properly served to defend himself."

Clearly therefore, the Plaintiff was, through the defence filed herein as far back as 8th July 2009, made aware that the plea of res judicata would be raised. And indeed it was formally raised, albeit 15 years later, through a Preliminary Objection.

20. It is also not in dispute that there have been no other suits filed by the parties and their privies after the Court of Appeal rendered its decision in Civil Appeal No. 15 of 2010.

21. The final issue is whether the former suit was between the same parties or parties under whom they or any of them claim. On that issue, counsel for the Plaintiff has submitted at page 4 of his submissions thus:

> " The parties herein are not suing in the same capacities or through their representatives as imputed by the 1st, 2nd and 3rd Defendants through their Notice of Preliminary Objection. The Plaintiff herein has sued in his personal capacity and as legal representative of Joseph Obose Okuma and Vincent Emayi Okasiaka. He was not involved in the Bungoma case."

It is true that Charles Oboti Emai the Plaintiff herein was not a party in Bungoma H.C.C.C. NO 11 of 2008. The parties in that case were Moses Okware Opari and Peter Manyuru Iwuoni as Plaintiffs versus Amayi Okumu Kasiaka, James Wandera and John Omongari as the Defendants. Joseph Obose Okumu and Vincent Emayi Okasiaki (both deceased and on whose behalf this suit has been filed) were not parties in Bungoma H.C.C.C NO 11 of 2009. At least their names do not appear as parties both in the plaint, the Decree and even the Memorandum of Appeal. It has been suggested in the submissions by counsel for the Defendant specifically at paragraph 28 that Amayi Okumu Kasiaka and Vincent Emayi Okasiaka are one and the same person. I think that is a matter best left to be determined at the trial. James Wandera and John Omangari were the other Defendants in Bungoma H.C.C.C. NO 11 of 2008. However, Joseph Obose Okuma and Vincent Emayi Okasiaka on whose behalf this suit has been filed were not parties in Bungoma H.C.C.C NO 11 of 2008. And neither were John Okware Manyuru (sued

as the legal representative of Joseph Manyuru Iwuoni), Joseph Musango Ayuya, Benedict Nambili Muhatia or Vincent Oduor Waringa (sued herein as the 1st, 4th, 5th and 6th Defendants) parties in Bungoma H.C.C.C. NO 11 of 2008. The only persons who are parties in this suit and were also parties in Bungoma H.C.C.C. NO 11 of 2008 are Peter Manyuru Iwuoni the 2nd Defendant herein and who was the 2nd Plaintiff in the Bungoma case and Moses Okware Opari Manyuru the 3rd Defendant in this case and who was the 1st Plaintiff in the Bungoma case. While defining the doctrine of res judicata, Black's Law Dictionary identifies the third element to be;

> " the involvement of the same parties, or parties in privity with the original parties."

And in setting out what res judicata entails, Section 7 of the Civil Procedure Rules which I have already citied above states that before the doctrine can be invoked, the issues in the former suit must have been:

> " between parties under whom they or any of them claim litigation under the same title." Emphasis mine

The term privity is defined in Black's Law Dictionary 10th Edition as:

> " The connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding or piece of property); mutuality of interest". Emphasis mine

Finally, in the case of Independent Electoral And Boundaries Commission -v- Maina Kiai (supra), among the elements identified so as to satisfy the plea of res judicata include:

> " That former suit was between the same parties or parties under whom they or any of them claim."

There is no doubt as I have already stated above, that the ownership of the suit land was the issue both in Bungoma H.C.C.C. NO 11 of 2008 and this case. The 2nd Defendant has gone at length in his further affidavit dated 19th February 2024 and specifically paragraphs *9* and *10* to show how, in a bid to enjoy the fruits of the Judgment in Bungoma H.C.C.C. NO 11 of 2008, Joseph Manyuru Iwuoni transferred the suit land to himself and Moses Okware Opari Manyuru. That the suit land was later sub-divided into two portions and transferred to Vincent Oduor Waringa and Benedictor Nambili Muhatia. Then in paragraph 11 of the same affidavit, he has deposed thus:

11: "That I such, I reiterate that the primary parties in the suit before the High Court in Bungoma are similar with the parties in the current suit and this Honourable Court should find so."

And in his submission on this issue, counsel for the Defendants has stated in paragraphs *25* and 29 as follows:

25: "It is the Applicant's affirmative answer that the parties in Bungoma H.C.C.C. 11 of 2008 and the current suit are the same or litigating under the same title."

29: " However, in regard to the other Defendants in the current suit namely Joseph Musango Ayuya, Benedictor Nambili and Vincent Oduor Waringa, the Applicants submit that they are subsequent proprietors of the subject parcels of land having acquired the same from the 2nd and 3rd Defendants/applicants."

There is really nothing to show any privity between the parties between the parties in this case and the parties in Bungoma H.C.C.C. NO 11 of 2008 in as far as the suit land is concerned. Res

judicata is not solely about the same subject matter. It is also about the same parties or parties acting in privity with each other over the same subject matter and the term privity, as is clear above, has a lot to do with the "connection or relationship between two parties." Unless the plaint in Bungoma H.C.C.C. NO 11 of 2008 was later amended, and this Court has not been told as much, and other than the fact that the two Defendants in Bungoma H.C.C.C. NO 11 of 2008 are the 2nd and 3rd Defendants herein, I do not see the applicability of the doctrine of res judicata in these proceedings. Counsel for the Defendants has submitted that the 4th, 5th and 6th Defendants are indeed subsequent proprietors of the suit land having purchased the same from the 2nd and 3rd Defendants. I am not persuaded that res judicata would apply under those circumstances when the said 4th, 5th and 6th Defendants were not themselves parties in Bungoma H.C.C.C. No 11 of 2008. That Amayi Okumu Kasiaka and Vincent Emayi Okasiaka are one and the same person, as submitted by the Defendants' counsel, is a matter to be determined on the evidence during the trial.

22. This Court is of course alive to the fact that under explanation NO 6 of Section 7 of the *Civil Procedure Act*, it is provided that:

> 6: "Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall for the purposes of this section, be deemed to claim under the persons so litigating."

In Bungoma H.C.C.C. NO 11 of 2008, the plaint does not disclose the Plaintiffs therein, and who are the 2nd and 3rd Defendants herein, as litigating in respect "of a public right or of a private right claimed in common for themselves and others". They appear to have been claiming for the suit land as the sole registered proprietors. Briefly, there are contested issues of facts and parties. That renders res judicata inapliable.

23. Having considered all the issues herein, I am not satisfied that the plea of res judicata has been properly invoked to defeat the Plaintiff's suit.

24. Since I have not up-held the plea of res judicata, I must now consider the other limb of the Preliminary Objection which is that:

2. The Suit Is Vexatious, Scandalous and An Abuse Of The Process Of The Court:

25. A vexatious suit is defined in the Black's Law Dictionary 10th Edition as follows:

> " A law suit instituted maliciously and without good grounds, meant to create trouble and expense for the party being sued."

The term frivolous is defined in the same Dictionary as:

> " Lacking a legal basis or legal merit; not serious, not reasonably purposeful".

A frivolous suit is defined in the same Dictionary as;

> " A law suit having no legal basis, often filed to harass or extort money from the defendant."

The same Dictionary defines scandalous matter as;

> " Civil Procedure.

Information that is improper in a Court paper because it is both grossly disgraceful (or defamatory) and irrelevant to any action or defense".

Abuse of process is defined in the same Dictionary as;

> " The improper and tortious use of legitimately issued Court process to obtain a result that is either unlawful or beyond the process's scope – Also termed abuse of legal process' malicious abuse of process, malicious abuse of legal process; wrongful process; wrongful process of law".

Order 2 Rule 15(1) (b) and (d) allows this Court to dismiss any suit which bears the above characteristics. It reads;

15:

(1) "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 above provisions were considered in the case of Yaya Tours Limited -v- Trade Bank Limited (in Liquidation) Civil Appeal No 35 of 2000 where the Court of Appeal said:

> " A plaintiff is entitled to pursue a claim in our courts however implausible and however improbable his chances of success. Unless the defendant can demonstrate shortly and conclusively that the plaintiff's claim is bound to fall or is otherwise objectionable as an abuse of the process of the Court, it must be allowed to proceed to trial ... It cannot be doubted that the court has inherent jurisdiction to dismiss that, which is an abuse of the process of the Court. It is a jurisdiction which ought to be sparingly exercised and only in exceptional cases, and it's exercise would not be justified merely because the story told in the pleading was highly improbable, and one which was difficult to believe ..."

And in DT Dobie & Company (k) Ltd -v- Muchina 1982 KLR I it was reiterated that;

> " A Court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court".

Guided by the above precedents and having considered all the pleadings herein, I am not persuaded that the plaintiff's pleadings are vexatious, frivolous, scandalous or an abuse of the process of this court. The issues raised merit a full trial.

26. That limb of the Preliminary Objection is equally for dismissal.

27. The up-shot of all the above is that the Preliminary Objection is dismissed with costs to the Plaintiff.

BOAZ N. OLAO

JUDGE

2ND MAY 2024

RULING DATED, SIGNED AND DELIVERED ON THIS 2ND DAY OF MAY 2024 BY WAY OF ELECTRONIC MAIL.

BOAZ N. OLAO

JUDGE

2ND MAY 2024