



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CIVIL CASE NO. 579 OF 2015

PETER ELIUD MUTUA MAUNDU1 ST PLAINTIFF

SAMUEL WATUKA MUINDI2 ND PLAINTIFF

ABDIRAHMAN MUHUMED ABDI 3 RD PLAINTIFF

AINU SHAMSHI AUTOMOBILE AND HARDWARE LIMITED.....4 TH PLAINTIFF

-VERSUS-

HEARTLAND HOLDINGS LIMITED.....1 ST DEFENDANT

THE REGISTRAR OF TITLES2 ND DEFENDANT

PATRICK SAITAMBAO LANGASANI3 RD DEFENDANT

LAWRENCE KISOSO4 TH DEFENDANT

HIGHWAY COMMODITY STORES LIMITED 5 TH DEFENDANT

JAMES KIMATHI MBALUKA6 Th DEFENDANT

EQUITY BANK LIMITED.....7 TH DEFENDANT

RULING

1. The plaintiffs brought this suit on 24/6/2015 through a plaint dated 20/4/2015. They contended that the 1st and 2nd plaintiffs were at all material times proprietors, as tenants in common in equal shares of Land Reference Number 20270, comprised in **Title Number IR 148180** (the **suit property**). They alleged that the 1st, 3rd and 4th defendants had fraudulently caused the suit property to be registered in the name of the 1st defendant. They sought various orders against the defendants, among them, an order directing the 2nd defendant to cancel the transfer registered in favour of the 1st defendant.

2. The 1st, 3rd, 4th, 5th and 6th defendants filed a defence dated 27/7/2017 in which they denied the plaintiffs' claim and averred that the suit herein offended the provisions of Order 4 rule 1(i) (f) and of the Civil Procedure Rules because the subject matter in this suit, related to the question of legal ownership of the suit property and was also the subject matter in Nairobi **ELC Case No 1286 of 2014** in which all the plaintiffs herein were defendants.

3. The 7th defendants filed a defence dated 25/9/2015 in which it contended that the plaintiffs' suit did not disclose any cause of action against it. Subsequently, the 7th Defendant brought an application dated 27/10/2017 seeking an order striking out the suit against it on the ground that no reasonable cause of action was disclosed against it. The 1st, 2nd, 3rd, 4th, 5th and 6th defendants similarly brought a notice of motion dated 13/6/2018 seeking an order striking out the plaintiff's suit on the ground that the cause of action in this suit was the same as the cause of action in **Nairobi ELC 1286 of 2014**.

4. The matter was handled by Honourable Justice Bor J until 8/10/2019 when she recused herself at the behest of counsel for the 1st, 3rd and 4th plaintiffs. The Presiding Judge of the Court subsequently allocated the matter to me. When the matter came before me for the first time on 8/11/2019, advocates for the parties indicated that they had already filed and exchanged written submissions on the two applications and they wanted a date for ruling on the two applications. I slated the matter for ruling on 10/3/2020. Unfortunately, on that day, I was not

sitting due to hospitalization at Nairobi Hospital. Court operations were on 16/3/2020 scaled down and open court sessions in the ELC Milimani were suspended. I have subsequently considered the two applications and herebelow are my analysis and determinations on the two applications.

Application by the 7th Defendant dated 27/10/2017

5. The applicant in the notice of motion dated 27/10/2017 filed written submissions dated 1/4/2019 in which they contended that the plaintiffs' pleadings did not make any allegation of any wrong-doing or misdeed on part of the 7th defendant. They argued that the plaintiffs' pleadings did not disclose any reasonable cause of action against the 7th defendant. They urged the court to strike out the suit against the 7th defendant. They relied on the Court of Appeal decision in **DT Dobbie & Company (Kenya) Limited v Joseph Mbaria Muchina & another (1980) eKLR** among other authorities.

6. In their written submissions dated 14/5/2019, the plaintiffs argued that no law insulated banks from explaining matters which may involve complicity and fraud on the part of the customers. They argued that the 7th defendant was a party necessary for the purpose of explaining the transactions in the bank account in which the proceeds of the impugned sale were deposited. I have considered the rival arguments.

7. The legal framework on who may be sued as a defendant is contained in Order 1 of the Civil Procedure Rules. Firstly, all persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged. Secondly, it is not necessary that every defendant shall be interested as to all the reliefs claimed in the suit. Thirdly, one would be a necessary party to a suit if his presence before the court may be necessary in enabling the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

8. At this stage, one of the two key questions in this dispute is whether the 1st and 2nd plaintiffs authorized the sale and transfer of the suit property to the 1st defendant. The second key question is whether the 1st, 3rd, 4th, 5th and 6th defendants are liable to reimburse the sum of Kshs 20,000,000 to the 3rd and 4th plaintiffs. The said sum is alleged to have been obtained fraudulently through an account held with the 7th defendant. A specific prayer requiring the 7th defendant to avail certain information is one of the reliefs sought in the plaint.

9. Given the above circumstances, it is my view that the 7th defendant may be a necessary party in the effectual adjudication and settlement of some of the key questions in this suit. I do not therefore find merit in the notice of motion by the 7th defendant dated 27/10/2017. The same is accordingly rejected.

Application dated 13/6/2018 by the 1st, 3rd, 4th, 5th and 6th Defendants

10. The 1st, 3rd, 4th, 5th and 6th Defendants contend and argue that this suit should be struck out on account of duplicity. Their case is that there exists **Nairobi ELC Case No 1286 of 2014** relating to the same subject matter; having the same issues and involving the same parties.

11. The case of the plaintiff is that the applicants did not invoke Section 6 of the Civil Procedure Act when moving the court. Secondly, they contend that the applicants have not satisfied the criteria for striking out a suit.

12. I have considered the rival evidence and submissions. From a glance at the pleadings in **ELC Case No 1286/2014**, it is apparent that the said suit was filed in 2014 by **Heartland Holdings Limited** against **Abdirahman Muhumed Abdi**. The other parties herein were not parties to the said suit. **ELC Case No 579 of 2015** was subsequently filed in June 2015. At that time, **ELC Case No 1286 of 2014** still had **Heartland Holdings Limited (plaintiff) and Abdirahman Muhumed Abdi (defendant)** as the only parties to the suit. The amendments which made the other plaintiffs herein defendants in **ELC Case No 1286 of 2014** were effected on 14th October 2015 after the suit herein had been initiated. It cannot therefore be concluded that all the plaintiffs herein deliberately initiated a duplicate suit. I say so because three of the plaintiffs herein were not parties to **ELC Case 1286 of 2014** at the time this suit was initiated.

13. Secondly, at this point it is not clear if **Ainu Shamshi Automobile and Hardware Limited** who is the 4th plaintiff in **ELC Case No 579 of 2015** is the same as the **Ainu Shamsi Group of Companies Limited** who is the 5th defendant in **ELC Case No 1286 of 2014**.

14. In the circumstances, I do not think the applicants in the notice of motion dated 13/6/2018 have demonstrated deliberate acts of duplicity on part of the plaintiffs to warrant issuance of an order striking out Nairobi ELC Case No 579 of 2015. However, in light of the fact that the two suits relate to the same subject matter, I will dispose the application dated 13/6/2018 by issuing an order consolidating this suit with Nairobi ELC Case No 1286 of 2014.

Disposal Orders

15. In light of the above findings, the notice of motion dated 27/10/2017 and the notice of motion dated 13/6/2018 are disposed in the following terms.

- a. The notice of motion dated 27/10/2017 is dismissed for lack of merit.**
- b. This suit is hereby consolidated with Nairobi ELC Case No 1286 of 2014 and the earlier of the two suits shall be the lead file.**
- c. The court seized of ELC Case No 1286 of 2014 shall hear the two consolidated suits.**
- d. Costs of the two applications shall be in the cause.**

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF MAY 2020.

B M EBOSO

JUDGE

In the presence of:-

M/s Koki Mbulu for the 1st, 3rd and 4th plaintiffs

Mr Kofuna for the 2nd plaintiff

Court Clerk - June Nafula