



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 80 OF 2013

JARED SAGINI KEENGWE.....PLAINTIFF

=VERSUS=

WALTER ONCHWARI.....1ST DEFENDANT

EVALYN ONCHWARI.....2ND DEFENDANT

NATIONAL SOCIAL SECURITY FUND.....3RD DEFENDANT

RULING

1. This is the Notice of Motion dated 29th June 2018 brought under order 25 rule (5) of the Civil Procedure Rules section 3A of the Civil Procedure Act.

2. It seeks orders:-

1. Spent.

2. That pending the hearing and determination of this application, the delivery of this judgment be deferred or otherwise arrested.

3. That this matter be marked as adjusted wholly and therefore settled.

4. That the costs of this application be provided for.

3. The grounds are on the face of the application and are:-

(a) On or about the year 2017 the matter was compromised at Kshs.4 million which the plaintiff has received in full settlement.

(b) It is just and fair that this matter be closed for the family.

4. The application is supported by the affidavit of Aristariko Onchwari, sworn on the 29th September 2018. There is also an affidavit sworn by Walter Onchwari, the 1st defendant/applicant herein sworn on the 29th June 2018 and a further affidavit sworn on 14th January 2019.

5. The application is opposed. There is a replying affidavit sworn by Jared Sagini Keengwe, the plaintiff/respondent herein on the 10th August 2018.

6. On the 19th December 2019, the court with the consent of the parties, directed that the application be canvassed by way of written submissions. The parties were directed to file their submissions within 30 days. The matter was fixed for mention on 1st April 2020. Mr. Onsomu for the 1st and 2nd defendants was present on 19th December 2019.

7. By the time of writing this ruling, there are no submissions filed on behalf of the 1st and 2nd defendants.

8. I have considered the notice of motion and the affidavits in support. I have also considered the replying affidavit and the submissions filed

on behalf of the plaintiff. The issue for determination is whether this application is merited.

9. It is the 1st defendant's case that the suit has been compromised upon him refunding Kshs.4 Million to the plaintiff. The plaintiff on the other hand contends that his claim against the 1st and 2nd defendants is for specific performance and seeking transfer of the suit property, rent collected by the 1st defendant and mesne profits. It is not a claim for refund of monies.

10. In his replying affidavit, the plaintiff denies that the dispute herein has been resolved. **Order 25 rule 5(1)** of the Civil Procedure Rules provides that:-

“Where it is proved to the satisfaction of the court, and the court after hearing the parties directs, that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith.”

11. The plaintiff/respondent has denied that there is any settlement. I find no merit in this application and the same is dismissed with costs to the plaintiff/respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 17TH DAY OF JUNE 2021.

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L. KOMINGOI

JUDGE

In the presence of:-

Ms Nyabuto for Mr. Nyamweya for the Plaintiff

No appearance for the Defendants

Phyllis - Court Assistant