



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT KAJIADO

ELC CASE NO. 29 OF 2020

OHDAE KENYA LIMITED.....PLAINTIFF

-VERSUS-

ROSE LANGAT.....1st DEFENDANT

PATRICK MUTUNKEI.....2nd DEFENDANT

RULING

This ruling is on the preliminary point of law dated 29/6/2020 raised by the advocate for the second defendant.

The said objection is based on Section (17) grounds namely;

- 1) The second defendant has no capacity to be sued as he is not the administrator of the estate of the deceased.
- 2) The plaintiff is a company owned by Koreans.
- 3) A company with a single foreign shareholder is prohibited from owning a freehold interest in Kenya under Article 65 of the constitution.
- 4) The consent of Land Control Board sanctioning the sale of the suit land was not valid.
- 5) The application is defective for non-joinder of necessary parties, the administrators of the estate of the deceased.

I will not enumerate all the grounds because I find the ones listed above sufficient to determine the preliminary objection. At the time of writing this ruling, I have not received the plaintiff's submissions but I also consider them unnecessary in determining the objection.

I find the preliminary objection has no merit because it raised more questions than answers. How does the second defendant know that the suit land belongs to a deceased person yet the same is registered in the name of the plaintiff?

How does the second defendant know that the plaintiff is owned by Koreans and that the shareholders are foreigners? How does he know that there was no consent of the Land Control Board in the sale of the suit land to the plaintiff?

Why does he not seek to join the parties that he says are necessary as they are administrators of the estate of the deceased?

Who is this undisclosed deceased and how does he own land that is registered in the name of the Plaintiff?

The entire suit and the Notice of Motion dated 28/5/2020 need to be opposed by a defence and a Replying Affidavit supported by evidence but not by unproven allegations. A Preliminary Objection can only be on a pure point of law and not on unproved facts.

I dismiss the objection dated 29/6/2020 and allow Notice of Motion dated 28/5/2020. I further direct that the parties fully comply with order 11 of the Civil Procedure Rules within 60 days failing which the court will issue orders to conclude this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF OCTOBER 2021.

M.N. GICHERU

JUDGE