



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC CASE NO. 219 OF 2015

JAMBO HOLDINGS LIMITED..... PLAINTIFF

=VERSUS=

DOUBLE CLEAN LIMITED.....1ST DEFENDANT

DAIMER ENTERPRISES LIMITED.....2ND DEFENDANT

RUORA INVESTMENTS LIMITED.....3RD DEFENDANT

MARSTONS ENTERPRISES LIMITED.....4TH DEFENDANT

NGINYO ROADWAYS LIMITED.....5TH DEFENDANT

GUARANTY TRUST BANK (KENYA) LIMITED.....6TH DEFENDANT

CHIEF LAND REGISTRAR.....7TH DEFENDANT

RULING

1. The 6th Defendant/Applicant filed a Notice of Motion dated 22nd October 2020 in which it seeks that the suit against it be truck out with costs on the ground that the plaint does not disclose any reasonable cause of action against it; that there is no relief sought against it; that it is an unnecessary party to the suit and that its continued involvement in this suit will not aid the court in determining the suit herein.

2. The Plaintiff/Respondent indicated to court that it was not opposed to the application by the Applicant. It is only the 1st to 5th Defendants/Respondents who opposed the Applicant’s application through grounds of opposition dated 22nd March 2021. The 1st to 5th Respondents contend that there is no need for a relief against a party for it to remain a defendant; that the Applicant should remain in the suit so that it can explain how the suit property was charged to it while the Respondents had title to the same and that the application is brought in bad faith as it has been brought after five years from the date the suit was filed.

3. The parties agreed to dispose the application by way of written submissions. The Applicant filed its submissions dated 1st April 2021. The 1st and 5th Respondents filed their submissions dated 8th July 2021. I have considered the Applicant’s application as well as the opposition to the same by the 1st to 5th Respondents. I have also considered the submissions by the parties herein. The only issue for determination is whether the plaint discloses any reasonable cause against the Applicant. As I said before in this ruling, the Plaintiff which filed this suit against the Applicant is not opposed to the application. In other words, the Plaintiff concedes that the plaint does not disclose any reasonable cause against the Applicant.

4. Order 1 Rule 3 of the Civil Procedure Rules provides as follows:

“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 to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise”.

5. There is no relief which is being sought against the Applicant. The 1st to 5th Respondents too concede that indeed there is no relief which is being sought against the Applicant. They only argue that the Applicant should remain in the suit so that it can explain how the suit

property was charged to it yet the 1st to 5th Respondents had title to the same. In my view, this explanation can be made by the Applicant's representative being called as witnesses. The Applicant does not have to be a party when the person who sued it does not want it to remain as a defendant. It is in this regard that I agree with the decision of my brother Justice Eboso in the case of Alumark Investments Limited Vs Tom Otieno Onyango & 4 Others.

6. There is absolutely no cause of action against the Applicant. I allow the Applicant's application with the result that the suit against it is hereby struck out with costs to the Applicant.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF NOVEMBER 2021

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Ms Murimi for Mutea for 6th Defendant/Applicant

Mr Nyang'au for 1st to 5th Respondents

Mr Kaula for Mr Mwangi for Plaintiff

Court Assistant: Mercy

E.O. OBAGA

JUDGE