



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT BUSIA**

**CIVIL CASE NO. 49 OF 2019**

**PASKAL MAKOKHA.....PLAINTIFF**

**- VERSUS -**

**1. KENNETH BARAZA.....1<sup>ST</sup> RESPONDENT**

**2. TIMOTHY ODANGA .....2<sup>ND</sup> RESPONDENT**

**3. RUTH OBILLO.....3<sup>RD</sup> RESPONDENT**

**4. DENNIS OPONDO..... 4<sup>TH</sup> RESPONDENT**

**5. CHRISTINE DIDIMO..... 5<sup>TH</sup> RESPONDENT**

**6. SYLVESTER BARASA ..... 6<sup>TH</sup> RESPONDENT**

**7. MARY NABWIRE OBILLO..... 7<sup>TH</sup> RESPONDENT**

**R U L I N G**

1. The defendants filed a preliminary objection dated 23/9/2019 raising the following grounds;

- a. The plaintiff lacks locus to bring this suit as he is not the registered owner of Bukhayo/Kisoko/1027.**
- b. The application is fatally defective and an abuse of the court process.**
- c. The entire suit is a sham.**
- d. That plaintiff has no exclusive rights over L.R. No Bukhayo/Kisoko/1027.**

2. In his submissions, the plaintiff/respondent cited the Case of *Mukisa Biscuit Manufacturing Company Limited Vs West End Distributors Limited (1969) EA 696 at page 700* where what constitute a preliminary objection was defined thus;

**“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear 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”.**

3. The respondent submitted that no busy body ought to be permitted to occupy the court’s time if indeed they are not closely related to the matter however in this Case, the plaintiff has stated his interest in the matter and therefore dismissing the suit in limine would be ill-advised as it will deny the applicant opportunity to adduce evidence. That summary dismissal of a Case is draconian and must be exercised with caution and as a last resort. In light of the foregoing, the respondent urged the court to dismiss the preliminary objection.

4. The defendants on their part submitted that title No. Kisoko/1027 is not registered in the plaintiff’s name therefore he cannot sustain a suit for eviction as he has no rights recognizable under Article 60 and 64 of the Constitution. The defendants accuse the plaintiff of not availing

documents of proprietorship nor exhibiting any letters of administration of the estate of his father.

5. In regard to the application, the defendants submit that the plaintiff has annexed a judgment showing he is serving a prison sentence at Korinda prison Busia yet the affidavit in support of the application says the affidavit was sworn in Nairobi. That the plaintiff is swearing to matters of fact which arose after his conviction without disclosing the source of his information. The defendants urged the Court to uphold their objection.

6. The plaintiff/respondent contested the preliminary objection that it raises issues of facts which require proof through adduction of evidence thus it fails the threshold set in the Case of *Mukisa Biscuits supra*. The preliminary objection seeks to dismiss both the application dated 23<sup>rd</sup> July 2019 and the attendant suit. In Paragraph 4 of the affidavit in support of the motion the plaintiff pleaded thus;

“That my vast land had been fenced off as the same had already been sub-divided amongst ourselves but the title still remains in the name of my father who is deceased”

Paragraph 5,

“That on or about the 2/2/2019 upon my conviction, the respondents invaded the land and forcefully evicted my son James Noah Mambeli threatening to kill him directly or through proxy which information was reported to Nambale police station vide OB No. 28/02/03/2019 and the same is still under investigation”.

7. The contents of paragraph 4 and 5 of the affidavit is reiterated in paragraphs 11 and 12 of the plaint. The plaintiff/respondent reveals through his pleadings that the title of the suit land is in the name of his deceased father. He however did not plead that he has taken letters of administration of his deceased father to bring this suit. Thus on the face of the pleadings, it is clear the plaintiff lacks locus in the absence of letters of administration.

8. On this account, I find there is merit in the preliminary objection. Consequently I strike out the suit with no orders as to costs.

**Dated, signed and delivered at BUSIA this 15<sup>th</sup> day of April, 2020.**

**A. OMOLLO**

**JUDGE**