



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 31 OF 2018

ISAAC WACHIRA MIGWI.....PLAINTIFF

VERSUS

KENYA BANKERS COOPERATIVE SOCIETY LIMITED....1ST DEFENDANT

DISTRICT LAND REGISTRAR KAJIADO.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING

What is before Court for determination is a Notice of Preliminary Objection by the 1st defendant dated 15th May, 2018 on the following grounds;

1. That the 1st Defendant has been improperly joined as a Defendant to this suit.
2. That the 1st Defendant is not the registered proprietor of the suit property nor does the 1st Defendant claim any interest in the suit property.

Both the 1st Defendant and the Plaintiff filed their submissions that I have considered.

Analysis and Determination

Upon perusal of the Notice of Preliminary Objection including the submissions filed herein, the only issue for determination is whether the 1st Defendant has been improperly joined in this suit.

The 1st Defendant contends that it has been improperly joined in this suit as he is not the registered proprietor nor does it claim any interest on the suit land. It has relied on various authorities including the case of **MUKISA BISCUITS MANUFACTURING CO LTD –VS- WEST END DISTRIBUTORS (1969) EA 696; Drummond Jackson V British Medical Association (1970) 2 WLR 688; DT Dobie & Co. Ltd Vs Muchina & Another (1982) KLR 1** to support its arguments.

The Plaintiff insists the 1st Defendant has been properly enjoined in the suit. A keen perusal of the documents annexed to the application dated the 12th March, 2018. I note the 1st Defendant was registered as a proprietor of land parcel number Kajiado/ Kisaju/ 8277; 8275; and 8276 which were resultant subdivisions of Kajiado/ Kisaju/ 1669 which is the land the Plaintiff is claiming was fraudulently transferred from him.

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.**’

The provisions are clear in terms of who can be a Defendant in a suit. As I have stated above, the 1st Defendant obtained titles in respect of subdivisions that emanated from the suit land. It is my view that the reliefs the Plaintiff is seeking arose from a cause of action that led to the 1st Defendant being registered as proprietor of portions of the suit land. I note the Plaintiff alleges fraud in paragraph 9 of the Plaintiff. In the case of **R. G. Patel v. Lalji Makanji [1957] EA 314** the former Court of Appeal for Eastern Africa stated thus:

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond

reasonable doubt, something more than a mere balance of probabilities is required.”

In relying on the case, I opine that the said allegations of fraud must be proved and this can only be done once the suit is set down for hearing on its merit.

It is against the foregoing that I find the Preliminary Objection unmerited and proceed to dismiss it. Costs will be in the cause.

Dated signed and delivered in open court at Kajjado this 10th day of December, 2018.

CHRISTINE OCHIENG

JUDGE