



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 644 OF 2017**

**GERALD MBAGHA MWAVISWA.....PLAINTIFF**

**=VERSUS=**

**NAIROBI CITY COUNTY.....1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup> DEFENDANT**

**RULING**

What is before me is the 1<sup>st</sup> defendant's Chamber Summons application dated 25<sup>th</sup> June, 2018 brought under Order 1 Rule 10(2) and (14) of the Civil Procedure Rules seeking an order that the 1<sup>st</sup> defendant be struck out of the suit. The application was brought on the ground that the 1<sup>st</sup> defendant was wrongly joined in the suit and that the plaintiff has no cause of action against the 1<sup>st</sup> defendant. The application was opposed by the plaintiff through a replying affidavit filed on 10<sup>th</sup> February, 2020. The plaintiff contended that the plaintiff raises a reasonable cause of action against the 1<sup>st</sup> defendant and that the application was an abuse of the process of the court. The plaintiff averred that the 1<sup>st</sup> defendant had a statutory role to play in the implementation of the reliefs sought in the plaint and as such it ought to remain as a party to the suit.

The application was heard on 10<sup>th</sup> February, 2020. I have considered the application together with the affidavit filed in opposition thereto by the plaintiff. In his plaint dated 11<sup>th</sup> September, 2017, the plaintiff averred that one, Himatlal Nandilal Bhatt had given him all that parcel of land known as L.R No. 209/1971/1, I.R 28194 ("the suit property") as a gift in 2003. The plaintiff averred that the suit property was a leasehold from the Government of the Republic of Kenya. The plaintiff averred that the lease for the suit property expired on 31<sup>st</sup> October, 2003. The plaintiff averred that it applied to the 2<sup>nd</sup> defendant for the extension of the said lease but the 2<sup>nd</sup> defendant had failed to do so. The plaintiff sought judgment against the 1<sup>st</sup> and 2<sup>nd</sup> defendants for;

- (i) A declaration that the plaintiff is the absolute owner of the suit property.
- (ii) An order compelling the 1<sup>st</sup> and 2<sup>nd</sup> defendants to renew the lease in respect of the suit property forthwith.

I am in agreement with the 1<sup>st</sup> defendant that the plaint does not disclose any cause of action against the 1<sup>st</sup> defendant. The plaintiff's complaint concerns the refusal by the 2<sup>nd</sup> defendant to renew the lease for the suit property. The plaintiff has stated that it is the 2<sup>nd</sup> defendant that has the mandate of renewing the said lease. The plaintiff has not mentioned any wrong that has been done by the 1<sup>st</sup> defendant to warrant its joinder to this suit. It is therefore my finding that the 1<sup>st</sup> defendant has been wrongly joined in the suit.

The upshot of the foregoing is that 1<sup>st</sup> defendant's application dated 25<sup>th</sup> June, 2018 has merit. The application is allowed as prayed.

**Delivered and Dated at Nairobi this 25<sup>th</sup> Day of June 2020**

**S. OKONG'O**

**JUDGE**

**Ruling delivered virtually through Microsoft Teams video conferencing platform in the presence of:**

The Plaintiff present in person

Ms. Munyasia for the 1<sup>st</sup> Defendant

Ms. Masinde for 2<sup>nd</sup> Defendant

Ms. C. Nyokabi-Court Assistant