

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 115 OF 2019

ZAMIN LIMITED.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF MOMBASA.....1ST DEFENDANT

MINISTER FOR AGRICULTURE, FISHERIES, LIVESTOCK AND

COOPERATIVES, MOMBASA COUNTY.....2ND DEFENDANT

RULING

(Application to strike out suit; plaintiff suing defendants claiming that they are constructing on the plaintiff's land; defendants stating that the project in issue is not their project; no response to the application; application allowed; plaintiff's suit dismissed with costs)

1. The application before me is that dated 4 February 2020 filed by the defendants. The application seeks orders that the Amended Plaintiff dated 28 June 2019 be struck out and the costs of this suit to be awarded to the defendants. The application is based on grounds inter alia that the amended plaintiff does not disclose any reasonable cause of action against the defendants. No reply has been filed to oppose the motion.

2. To put matters into context, this suit was commenced through a plaint which was filed on 26 June 2019. In the plaint, the plaintiff contended to be the registered owner of the land parcel MSA/MS/Block I/1677 situated in Shelly Beach, Likoni. It averred that on 18 June 2019, the defendants, through their agents, trespassed into the suit land and commenced construction of structures. In the suit, the plaintiff has asked for orders for a declaration of ownership of the suit land, a permanent injunction against the defendants, exemplary damages and costs. An amended plaint dated 28 June was filed on 1 July 2019. The addition was in the prayers, where the plaintiff added a prayer for an order for the defendants to remove the structures on the land or in the alternative compensate the plaintiff for the land.

3. The supporting affidavit to this application is sworn by Jimmy Waliaula, the Director of Legal Affairs of the County Government of Mombasa. The gist of his affidavit is that the project in issue is not one being carried out by the County Government of Mombasa.

4. The plaintiff has opted not to file anything to oppose the motion. I have no reason to doubt the position of the defendant that the project in question is not its project. If the plaintiff had wished to assert the position in the plaint, it would have responded to this motion. I in fact observe that the plaintiff seems to have lost interest in this suit, once it was raised in court, by counsel for the defendants, from the bar, that the plaintiff needs to reconsider its position since this is not a project of the defendants. From that day, the applicant's counsel has not attended court. There was an application for injunction which the plaintiff had filed contemporaneously with the suit and which the plaintiff failed to prosecute resulting in its dismissal. Clearly, the plaintiff, after being informed that it may have sued the wrong party, has opted not to participate any longer in these proceedings. The graceful thing to do would have been to withdraw the suit and probably seek to have the defendants waive costs. But that is not an avenue that the plaintiff has taken.

5. Given the foregoing, I allow this application. I dismiss the plaintiff's suit with costs to the defendants.

6. Orders accordingly.

DATED AND DELIVERED THIS 18TH DAY OF JUNE 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA