



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 232 OF 2017

JANE NGONYO NGIGE

(Suing as the administrator of the estate of

BONIFACE NGIGE WAWERU – deceased).....PLAINTIFF

VERSUS

JOHN NTIMERI.....1ST DEFENDANT

DELAMERE NTIMERI.....2ND DEFENDANT

NDOSHO NTIMERI.....3RD DEFENDANT

MOSES NTIMERI.....4TH DEFENDANT

MELI NTIMERI.....5TH DEFENDANT

SAMUEL NTIMERI.....6TH DEFENDANT

THE LAND REGISTRAR.....7TH DEFENDANT

THE HON. ATTORNEY GENERAL.....8TH DEFENDANT

RULING

What is before Court for determination is the 1st to 6th Defendants' Notice of Motion Application dated the 19th February, 2019 brought pursuant to Order 2 Rule 15 (1) and Order 31 of the Civil Procedure Rules. The Applicants seek the following orders:

1. That the suit against the 1st to 6th Defendants be struck out.
2. That the costs of this motion and the suit be to the 1st to 6th Defendants.
3. That there be such other or further Orders as the Court deems fair and expedient to grant.

The application is premised on the summarized grounds that the suit discloses no reasonable cause of action against the 1st to 6th Defendants and it scandalous, frivolous as well as vexatious. Further, that the suit is an abuse of the court process. They contend that the Plaintiff obtained a confirmation of letters of administration and distribution of a property that was not part of the estate of Boniface Ngige Waweru (deceased). Further, that the Plaintiff lacks locus standi to sue the 1st to 6th Defendants for trespass as the suit is founded on a forged document not issued by the Land Registrar, Kajiado North. They insist the Plaintiff never issued a citation to the 1st to 6th Defendants as the heirs of the alleged deceased vendor of LR No. Kajiado/ Ol Choro Onyore/ 1314.

The Plaintiff opposed the application and filed a replying affidavit sworn by Martin Kuria the Advocate handling the matter on her behalf where he deposes that the application is misguided, total farce and misrepresentation of the facts to the court. He contends that the application is defective and has no substantive or legal weight whatsoever and is a blatant abuse of the court process. He avers that the application seeks to rely on evidential matters in support while they have failed to file an affidavit to support those allegations. He states that the Applicants are clearly misguided in their grounds in support of the motion as they allege the Plaintiff does not have a cause of action

against them yet the Plaintiff, documents in support including witness statements have brought out a clear case of various illegalities perpetrated by the applicants including but not limited to trespass occasioned against the Plaintiff. Further, that the application purports to obfuscate facts by alleging that the Plaintiff obtained letters of administration on land not owned by the late Boniface Ngige yet it is clear the deceased purchased the said land for value and has been in possession of the same for numerous years. He insists it has been demonstrated that the Plaintiff and her husband were adverse possessors in respect to the suit land past the statutory minimum time. Further, that the Plaintiff has locus to institute this suit as she has letters of administration in respect to the deceased estate. He claims the issue of forgery can only be heard and successfully determined in the hearing of this suit *inter partes*. Further, the applicants were not beneficiaries of the estate of the late Boniface Ngige. He reiterates that this suit was properly filed, cause of action established and the weighty issues that are on record can only be heard and determined during the hearing of the suit. The Applicants and Respondent filed their respect submissions to canvass the instant application.

Analysis and Determination

Upon consideration of the Notice of Motion dated the 19th February, 2019, replying affidavit and rivaling submissions, the only issue for determination is whether this suit should be struck out against the 1st to 6th Defendants for failing to disclose a reasonable cause of action against them.

The Applicants in their submissions contend that the suit does not demonstrate any reasonable cause of action against the 1st to 6th Defendants and the Plaintiff has no locus to institute this suit. Further, the suit is an abuse of the court process. To buttress their arguments, they have relied on the following decisions: **D.T. Dobie & company (Kenya) Ltd vs Muchina (1982) KLR**; **Susan Rokih Vs Joyce Kandie & 6 Others (2018) eKLR**; **Law Society of Kenya Vs Commissioner of Lands (2000) eKLR**; **Wilmot Mwadilo, Edwin Mwakaya, Amos Nyatta & Patrick Mbinga Vs Eliud Timothy Mwamunga & Sagall Ranchers Limited (2017) eKLR** and **Satya Bhamu Gandhi Vs Public Prosecutions & 3 Others (2018) eKLR**.

The Respondent in her response submitted that she has rightfully pleaded that the 1st to 6th Defendants have trespassed on land bought by her late husband on which she has lived since 1984. Further, that she has established a cause of action against the 1st to 6th Defendants and demonstrated the locus in the replying affidavit. She contended that the Applicants did not attach an affidavit to support their averments. She relied on the decisions of **Trust Bank Limited V Amin Company Ltd & Another (2000) KLR 164**; **Ramji Megji Gudka Ltd Vs Alfred Morfat Omundi Michira & 2 Others (2005) eKLR** and **Cooperative Merchant Bank Ltd Vs George Fredrick Wekesa Civil Appeal No. 54 of 1999** to buttress her averments.

Order 2 rule 15 of the Civil Procedure Rules provides that: **“(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that— (a) it discloses no reasonable cause of action or defence in law; or (b) it is scandalous, frivolous or vexatious; or (c) it may prejudice, embarrass or delay the fair trial of the action; or (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”**

From a perusal of the Plaintiff, I note the Plaintiff pleaded at paragraph 5 that she is the widow and administrator to the estate of Boniface Ngige Waweru having been issued with a Grant on 7th February, 2012 which was confirmed on 16th June, 2014. The Plaintiff has further pleaded that it is her deceased husband who is the lawful owner of land parcel number Kajiado/ Ol Choro Onyore/ 1314 which he purchased from Ntineri Ololotuno vide a Sale Agreement dated the 16th January, 1984. Further, that she has been residing on the said land and the 1st to 6th Defendants have trespassed thereon. She further raised an issue against the 7th Defendant whom she claims issued her with a fake Certificate of Title in respect to LR No. Kajiado/ Ol Choro Onyore/ 1314. In the Plaintiff, the Plaintiff has further proceeded to particularize her claim as against the Defendants. The 1st to 6th Defendants on the other hand claim the Plaintiff has no locus to institute this suit and has failed to disclose a reasonable cause of action against them. In the case of **RAMJI MEGJI GUDKA LTD –Vs- ALFRED MORFAT OMUNDI MICHIRA & 2 OTHERS [2005] eKLR** the Court held that:

“In our view, the power to strike out pleadings must be sparingly exercised. It can only be exercised in clearest of cases. The issue of summary procedure and striking out of pleadings was given very careful consideration by this Court in *DT DOBIE & COMPANY (KENYA) LTD. V. MUCHINA [1982] KLR 1* in which Madan J.A. at p. 9 said:-

“The Court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage, the court ought not to deal with any merits of the case for that is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits “without discovery, without oral evidence tested by cross-examination in the ordinary way.” (Sellers LJ (supra). As far as possible indeed, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks right.”

In dealing with the issue of triable issues, we must point out that even one triable issue would be sufficient. A Court would be entitled to strike out a defence when satisfied that the defence filed has no merit and is indeed a sham.”

Based on the facts before me, the legal provisions cited above, while associating myself with the quoted decision, I find that from the averments in the Plaintiff which I have partially highlighted, there are triable issues raised which I deem sufficient and cannot be determined at this interlocutory stage.

On whether the Plaintiff had locus standi to institute this suit, I wish to make reference to the case of **Law Society of Kenya Vs Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000**, where the Court held that: -

“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”.

Based on the facts at hand, I note the Plaintiff has a Certificate of Confirmation of Grant in respect to the estate of Boniface Ngige Waweru (deceased) and with this suit having been instituted on behalf of the said estate, and in associating myself with the decision I have cited above, I find that the Plaintiff indeed has locus standi to proceed with it. I opine that this matter should proceed to full trial to enable the court make a proper determination of the same on its merits.

It is against the foregoing that I find Notice of Motion application dated 19th February, 2019 unmerited and will disallow it. Costs will be in the cause.

Dated Signed and Delivered via email this 14th Day of July, 2020

CHRISTINE OCHIENG

JUDGE