



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ENVIRONMENT AND LAND COURT
CIVIL SUIT NO. 236 OF 2012

JUSTUS MUGAA M'MPWI.....PLAINTIFF

VERSUS

FRANCIS KAMUTA M'THIRUAINADEFENDANT

RULING

The defendant in this suit filed grounds of opposition dated 25th November, 2014

in the following form:

“The Respondent/Defendant shall oppose the Plaintiff's/Applicant's application dated 3rd November, 2014 on the following grounds:-

- i. *The issues raised in the application are res judicata.*
- ii. *The application is brought under the wrong provisions of the law.*
- iii. *The application is frivolous, vexatious, scandalous and an abuse of the Court process.*
- iv. *The application seeks orders that were earlier denied by the Court vide the Ruling dated 18th February, 2014. REASONS WHEREFORE, the respondent shall be praying the Court to dismiss or strike out the Plaintiff's application with costs to the Defendant/Respondent”.*

Having perused the Submissions proffered by the parties, the defendant argues that the orders sought by the plaintiff in his application dated 3rd November, 2014 are similar to orders that were denied by the Court vide his earlier application dated 13th December, 2012 whose Ruling was delivered on 18th February, 2014. The Plaintiff on the other hand claims that the main prayer in the application dated 3rd November, 2014 is different as now he is seeking maintenance of *status quo* which order, if granted, will affect both the plaintiff and the defendant whereas the earlier application dated 13th December, 2012 sought Injunctive Orders against the defendant only.

I have carefully examined the Submissions the parties have proffered. Although they presume to be submitting on a Notice of Preliminary Objection, it is clear that the Defendant never filed a Preliminary Objection. What he filed were grounds of opposition which should be considered alongside other Submissions and averments when this Court hears and determines the plaintiff's application dated 3rd November, 2014. Grounds of opposition are just that. They are grounds of opposition. They do not amount to a Notice of Preliminary Objection on a point of law. Indeed grounds of opposition do not constitute an application in contradistinction to a Preliminary Objection on a point of law which constitutes an application. In the circumstances, I am unable to dismiss the plaintiff's application dated 3rd November, 2014 as it is clear that the parties conflated grounds of opposition with a Preliminary

Objection. To dispose of the application expeditiously. I issue the following directions/ orders:

1. The application by the plaintiff dated 3rd November, 2014 is to be canvassed by way of Written Submissions with the Plaintiff filing and exchanging his Submissions within 21 days of the date of this Ruling.

2. The Defendant is to file and exchange his Written Submissions within 21 days after he is served by the plaintiff with his Submissions.

3. Upon closure of Submissions, the parties should obtain a mutually convenient date for directions from the registry.

4. Costs so far incurred shall be in the cause.

It is so ordered.

Delivered in Open Court at Meru this 3rd day of November, 2015 in the presence of:-

CC:

Daniel/Lilian

Rimita for Defendant/Respondent

plaintiff's Advocate Absent

P. M. NJOROGE

JUDGE