



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 240 OF 2013

NYONGESA CHRISTOPHER MAKHANU PLAINTIFF

VERSUS

NZOIA SUGAR CO. LTD STAFF RETIREMENT BENEFIT SCHEME..... 1ST
DEFENDANT

COUNTY GOVERNMENT OF BUNGOMA..... 2ND DEFENDANT

WEST ENGINEERING (K). LTD..... 3RD DEFENDANT

RULING

1. The 1st Defendant has raised a preliminary objection to the Plaintiff's application and suit. The gist of the objection is that this court lacks jurisdiction to entertain this suit. The objection is supported by Counsel for the 3rd defendant. The 1st Defendant urged the court to strike out the Plaintiff's suit.
2. The 1st Defendant through Mr. Nyamu submits the Plaintiff's claim is about his professional integrity and does not touch on issues of environment, occupation or user of the land which this court has no jurisdiction to hear.
3. In the plaint filed in court on 3rd September 2013, the Plaintiff seeks for prayers outlined in paragraph 9 thereof, ***“The Plaintiff's prayers against the Defendants jointly and severally is for an order of permanent injunction restraining the Defendants, their agents, servants howsoever called from:***

I). Proceeding with constructing the Residential flats on L.R. No. E. Bukusu/Kanduyi/15270 without the supervision of the plaintiff.

ii). An order restricting the 2nd Defendant from issuing compliance certificate and certificate of occupation in respect of the residential flats.”

4. Mr. Situma for the 3rd Defendant submitted this suit has been presented to the wrong forum. That this court does not have jurisdiction as provided under Article 162 (2) of the Constitution and Section 13 of the Environment and Land Court Act. That this matter does not fall under land as provided under Article 260 of the Constitution and the suit should be struck out.
5. The Applicant/Plaintiff opposed the objection. He submitted that the Environment and Land Act was not complied with as provided under the Physical Planning Act. That this court has jurisdiction to entertain this matter. He submitted there was no evidence environmental conditions had been fulfilled.
6. Mr. Nyamu replied that the Plaintiff's submission is made outside the pleadings. Being sued for negligence if the building collapses is not a matter within this courts jurisdiction.

7. I have considered the submission for and against the objection vis a vi the pleadings filed. The Plaintiff at paragraph 7 avers that on the 1st Defendant's instructions, he prepared a development plan which complied with the statutory obligations.
8. At paragraph 8 of the plaint, he pleaded the Defendants disregarded the standard procedure and commenced work without the Plaintiff's input but citing him as an architect in charge. The unsupervised work poses real danger to the safety of the public at large and exposes the Plaintiff to questions as regards professional negligence and standards.
9. My understanding of the claim in reading the plaint is other than protecting his professional interest, the Plaintiff is concerned with the dangers the public would suffer. This is protected under Section 3 of the Environment Management & Coordination Act which entitles everyone to a clean and healthy environment. Under Sec. 3 of Environment Management & Coordination Act, anyone can file suit and this court would be the appropriate forum to channel it to .
10. The Statutory obligations referred to in paragraph 6 and 7 of the plaint includes the provisions of the physical planning Act. The Plaintiff was therefore not making his submissions outside his pleadings.
11. Finally the prayers sought is to bar **“construction of the residential flats on L.R. No. E. Bukusu/S. Kanduyi/15270.”** Mr. Situma argues this does not relate to user or occupation to land. If construction of residential flats on a parcel of land is not user & occupation then my question – what constitutes occupation & user?
12. I do find the objection as lacking in merit and dismiss it with costs to the Plaintiff.

DATED, SIGNED and Delivered this 3rd day of March 2014

A. OMOLLO

JUDGE.