



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION
ELC NO. 1376 OF 2013

LETOIRE NTIRORI.....1ST PLAINTIFF

JOHN OSHUMU.....2ND PLAINTIFF

=VERSUS=

ZACHARIA MANYURA.....DEFENDANT

RULING:

What is coming up for determination is the Notice of Preliminary Objection dated 27th November, 2013 filed by the Defendant herein. The Defendant has averred that the Plaintiffs lack *locus standi* to institute this suit against the Defendant since they have never been registered owners/proprietors of the suit property.

The Plaintiffs herein filed this suit on 13th November, 2013 and sought for various Orders against the Defendant. Among the orders sought was a declaration that the Plaintiffs are rightful and absolute owners of Lands known as *KJD/Kitengela/ 49536*, *KJD/Kitengela/49535*, and *KJD/Kitengela/ 60089* and other lands belonging to the 1st plaintiff and family. Simultaneously, the Plaintiffs filed a Notice of Motion even dated and sought for temporary injunction to restrain the Defendant from dealing with the above mentioned parcels of land.

The Defendant filed a Replying Affidavit in opposition to the Notice of Motion and also filed the instant Notice of Preliminary Objection.

The said preliminary objection is opposed by the Plaintiffs. The Plaintiffs in the Plaint alleged that the Defendant colluded with *Kajiado Land Registry Officials* and fraudulently issued the Defendant with title Deeds for land known as *KJD/Kitengela/32454* among others. The Plaintiffs therefore alleged fraud on the part of the Defendant.

The Defendant has averred that the Plaintiffs have no Locus Standi because the Plaintiffs were never registered as proprietors of this parcel of land. Can the Notice of Preliminary objection herein qualify to be a Preliminary Point to laws? The case of **Mukisa Biscuit Manufacturing Co.Ltd Vs West End Distributors, Ltd (1969) EA 698**, defined what a preliminary objection is ;

“Preliminary objection must be confined to a pure point of law which may be argued before court based on the assumptions that all the facts are correct”.

Has the Defendant herein raised a pure point of law? The Defendant has averred that the Plaintiffs have no locus standi to bring up the suit because they have never been registered as proprietors of this parcel of land. However the plaintiffs alleged that the Defendant got registered as the proprietor of the suit land through fraud. The allegations of fraud have to be ascertained through calling of evidence.

A preliminary point or objection should be capable of disposing of the matter preliminarily without the court having to resort to ascertainment the facts from elsewhere apart from looking at the pleadings. **See Quick Enterprises Ltd Vs Kenya Railways Corporation Kisumu High Court, Civil Case No. 22 of 1999.**

However, on this matter, the court cannot dispose of the matter by just looking at the pleadings, facts have to be ascertained.

Having now considered the Notice of Preliminary objection, the pleadings generally and the written submissions, I find that the instant preliminary objection does not raise a pure point of law which is clear and beyond doubt but it is premised on facts which are disputed and need to be ascertained. See **United Insurance Co. Ltd Vs Scholastica A. Odera, Kisumu High Court, Civil Appeal No.6 of 2005.**

For the above reasons, the court finds that the Notice of Preliminary Objection raised by the Defendant is not merited. The same is dismissed entirely with costs in the cause.

It is so ordered.

Dated, signed and delivered this **11th** day of **July, 2014**

L.GACHERU

JUDGE

In the Presence of:-

Mr Ochako for the 1st and 2nd Plaintiffs

Mr Mungai for the Defendant/Applicant

Kamau: Court Clerk

L.GACHERU

JUDGE