



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND AT ELDORET

ELC NO 885 OF 2012

LOICE JERUTO KOECH.....PLAINTIFF

VERSUS

CHARLES OMARIBA.....DEFENDANT

RULING

This ruling is in respect of an application dated 26th March 2018 by the defendant/applicant seeking that the plaintiff's suit be struck out on the following grounds:

- a) That the suit land does not belong to the defendant.
- b) That the defendant is incapable of transferring land to the plaintiff.
- c) That the suit land is part of the estate of Jelagat Singoei

Counsel agreed to canvass the application by way of written submissions which were filed.

Defendant/Applicant's Submission

Counsel submitted on the genesis of the suit whereby the defendant and the plaintiff entered into a sale agreement and the plaintiff paid Kshs. 690,000/-. That the defendant refunded Kshs. 90,000/- leaving a balance of kshs, 600,000/- and rescinded the agreement with an outstanding balance to the plaintiff of Kshs. 465,000/

Counsel submitted that a party cannot give that which he does not have as the suit land belongs to a deceased person. Counsel therefore urged the court to strike out the suit.

Plaintiff/Respondent's Submission

Counsel for the plaintiff in response to the application submitted that the issue that the suit land is part of the estate of a deceased person does not arise as the applicant bought the suit land from one Joshua Kipleting Arap Too who had earlier bought the same from the late Jelagat Singoei. That the respondent bought the land from the applicant defendant.

It was Counsel's further submission that the deceased sold the land on 5th September 2000 and forwarded all the documents to the defunct Eldoret Municipal Council hence the applicant should not be allowed to hide behind the estate yet he had no contract with the deceased. Counsel also submitted that there is no nexus between the estate of the deceased and the applicant. That the issues raised in the application are triable issues which should wait for the full trial of the case. He urged the court to dismiss the application with costs to the plaintiff.

Analysis and determination

This application is for striking out of the plaintiff's suit on the ground that the suit land belongs to the estate of a deceased person. From the submissions of Counsel for the defendant/applicant and the brief background to the suit, it is clear that there are triable issues that can only be dealt with during the full hearing of the suit.

Counsel has submitted that the defendant and the plaintiff entered into a sale agreement for the suit land whereby the plaintiff paid the defendant Kshs. 690,000/-. It is admitted that the defendant still owes the plaintiff Kshs. 465,000/-. How are we supposed to deal with these issues when the court strikes out the plaintiff's suit at this interlocutory stage?

I find that this application is misplaced and is therefore dismissed with costs to the plaintiff.

Dated and delivered at Eldoret this 23rd day of May, 2019

M.A. ODENY

JUDGE

RULING READ in open court in the presence of Mr.Oduor holding brief for Momanyi for Defendant/Applicant and Miss.Bonareri holding brief for Melly for Plaintiff/Respondent.

MR. Mwelem – Court Assistant