



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 2 OF 2018

RIMOINE OLE SORDO.....1ST PLAINTIFF

RASH ENERGY CO. LTD.....2ND PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF NAROK.....1ST DEFENDANT

THE GOVERNOR COUNTY

GOVERNMENT OF NAROK.....2ND DEFENDANT

COUNTY EXECUTIVE COMMITTEE MEMBER.....3RD DEFENDANT

COUNTY GOVERNMENT OF NAROK.....4TH DEFENDANT

RULING

What is before the court for determination is a Notice of Preliminary Objection dated 15th March, 2018 in which the Respondent contends that the suit herein does not disclose any cause of action and consequently they sought that the Plaintiff's Notice of Motion together with the Plaintiff that was filed in court be struck out with costs.

The Defendants contend that the Plaintiffs entire suit is based on unfounded apprehension that the Defendants want to interfere with the Plaintiffs rights of ownership to the suit property following the carrying out of demolitions within Narok Township and the suit land marked for demolition and further that they received verbal threats from the office of the Defendant.

The Defendants allege that the Plaintiff has not produced any documents in support of their contentions. By consent of the parties it was agreed that the Preliminary Objection be disposed off by way of written submissions. The Defendants contend that the suit herein is a mere precautionary measure grounded on the basis of apprehension arrived purely at the conclusion of the Plaintiff's imagination.

The Plaintiff had filed two separate sets of submissions one that is jointly for the 1st and 2nd Plaintiffs and another for the 2nd Defendant alone.

It is the contention of the 1st Plaintiff that the 1st, 2nd and 3rd Defendants have continued to threaten them on the basis that the suit land sits on public property and it is because of the aforesaid threats that they sought the refuge of the court.

It is the 1st Plaintiff's contention that the Preliminary Objection raised by the Defendants does not raise any issues of law and what has been raised as purely matter of facts and thus the said Preliminary Objection has been brought in bad faith and that the Defendants are avoiding the hearing of the suit herein on merit. The Plaintiffs allege that the suit herein raises triable issues and that the issues raised by the Defendants can't be determined in a summary manner.

I have read the Preliminary Objection before me and the submissions field by learned counsel on behalf of the Plaintiffs and Defendants. What constitutes a Preliminary Objection and the manner of hearing the same is now well settled. In the case of **MUKISA BISCUIT MANUFACTURING COMPANY LIMITED –VERSUS- WEST END DISTRIBUTORS LIMITED (1969) EA 696** the court observed:

“A Preliminary Objection consisting of point of law which has been pleaded or that arises by a clear implication out of the pleadings and which if argued as a preliminary point will dispose off the suit.”

I have looked at the Preliminary Objection before me and the submissions filed by counsel the test to be applied is whether the Preliminary Objection consists of issues of law which are pleaded, points of law that arise from pleadings and which if argued will dispose the suit. In the instant matter the point of law raised by the Defendant is coached as **“The suit herein does not raise any cause of action”**.

A cause of action in my mind relates to whether the facts pleaded disclose any claim. The facts that the Defendant issues are contested by the Plaintiffs and thus does not make their pleading a non-starter. Pleadings that do not disclose any cause of action must be so hopelessly pleaded that they raise no issues to be determined.

In the case of **EL-BUSAIDY –VERSUS- COMMISSIONER OF LANDS & 2 OTHERS (2002)EKL**R the court stated:-

“The Preliminary Objection herein was raised by the Defendants. Can it be said that they do accept the facts as pleaded by the Plaintiff to be true; in which case they could then apply the provisions of Section 136(1) to it to make the Plaintiff’s pleadings a non-starter? But the Defendants defend this suit because they do not accept the Plaintiff’s facts as pleaded. Clearly therefore, the Defendant’s preliminary point is not based on a commonly accepted set of facts and the set of facts herein would not therefore be the basis of a preliminary point of objection and a point of law as understood and accepted in our jurisdiction.”

From the foregoing it is my view that the Preliminary Objection dated 15th March, 2018 does not raise any points of law and I accordingly dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **24th** day of **July, 2019**

Mohammed Kullow

Judge

24/7/19

In the presence of: -

Ms Lemein holding brief for Naikuni for the 1st Plaintiff

Mr Bigogo for 2nd plaintiff

Ms Adala holding brief for Kemboy for the 1st, 2nd and 3rd defendants

Mohammed Kullow

Judge

24/7/19