



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE No. 300 OF 2016**

**JAMES KIBUGU KIONI.....1<sup>ST</sup> PLAINTIFF**

**SOLOMON MURIITHI KIBUGU.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**SIMON MUIGAI MWANGI .....1<sup>ST</sup> DEFENDANT**

**KIARIE KARIUKI & GITHII ADVOCATES.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. By Notice of Motion dated 19<sup>th</sup> March 2018, the 2<sup>nd</sup> defendant seeks orders that its name be struck out from the suit and that it be awarded costs of the application. The application is supported by an affidavit sworn by Christine Githii, an advocate of this court practising as such in the firm of Kiarie Kariuki & Githii Advocates. She deposed that the 2<sup>nd</sup> defendant represented the plaintiffs and the 1<sup>st</sup> defendant in a sale agreement dated 10<sup>th</sup> June 2013 until the plaintiffs failed to pay its fees. The 2<sup>nd</sup> defendant also represented the plaintiffs in Nakuru Succession Cause No. 120 of 2012. As per terms of the agreement, the plaintiffs delivered to the 2<sup>nd</sup> defendant a Certificate of Lease to hold as a stakeholder for its client, the 1<sup>st</sup> defendant. That the 2<sup>nd</sup> defendant has no interest in the Certificate of Lease besides holding as security for its client. That therefore the plaintiffs have no reasonable claim against the 2<sup>nd</sup> defendant.

2. A consent letter dated 30<sup>th</sup> July 2018 was filed on 17<sup>th</sup> August 2018 as between the 1<sup>st</sup> and 2<sup>nd</sup> defendants in which the 1<sup>st</sup> defendant indicated that the application be allowed as prayed.

3. The plaintiff did not file any response to the application or any submissions despite directions being given as to their filing and exchange. The 2<sup>nd</sup> defendant argued in its submissions that no reasonable cause of action is disclosed against it, that it's not a necessary party to the case and that the application should therefore be allowed.

4. I have considered the application and the submissions. I have been invited to strike out the plaintiffs' claim against the 2<sup>nd</sup> defendant. Even though the application is unopposed and the relief sought is discretionary, I remind myself that striking out is a draconian measure that should only be resorted to in the clearest of cases. In **Crescent Construction Co. Ltd vs. Delphis Bank Ltd [2007] eKLR** the Court of Appeal stated:

...

19<sup>th</sup> March 2018 and of the suit. The costs shall be paid by the plaintiffs.

7. Ruling in this matter was to be delivered on 20<sup>th</sup> March 2019 but was delayed since I proceeded on a lengthy medical leave. The delay is regretted.

**Dated, signed and delivered in open court at Nakuru this 18<sup>th</sup> day of July 2019.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

No appearance for the 2<sup>nd</sup> defendant/applicant

No appearance for the plaintiffs/respondents

No appearance for the 1<sup>st</sup> defendant/respondent

Court Assistants: Beatrice & Lotkomoi