



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MOMBASA**

**ELC NO. 411 OF 2016**

**THOMAS SCHIERING.....PLAINTIFF**

**VERSUS**

**NEREAH MICHEAL SAID.....DEFENDANT**

**RULING**

*(Suit by plaintiff seeking orders that he be registered as proprietor of certain properties; the properties having been in the name of a company jointly owned between the plaintiff and defendant; properties then transferred into the name of the defendant; preliminary objection that the plaintiff lacks locus for he is suing on behalf of a company; prima facie, plaintiff suing on his own behalf; no merit in the preliminary objection; same objection raised and dismissed in another related suit; objection being an abuse of the court process; objection dismissed with punitive costs)*

1. The defendant has raised a preliminary objection that the plaintiff has no locus to file this suit.
2. To put matters into context, this suit was commenced through a plaint which was filed on 23 December 2016. The plaint was later amended. The case of the plaintiff is that in the year 2007, he acquired the land parcel Kwale/Kinondo/755 with his ex-wife. They divorced and part of the settlement was that the plaintiff will remain with the suit land which was later transferred to Rising Eagle Limited, a limited liability company formed by the plaintiff and the defendant. In the year 2012, the plaintiff wanted to sell his portion of the property and secured a buyer but the defendant advised him that the property could not be subdivided while in the name of the company hence the need to transfer the land into the name of the defendant for ease of transaction. The plaintiff then executed a transfer of the property into the name of the defendant. The land was then subdivided into three portions, being Kwale/Kinondo/2458 and Kwale/Kinondo/2459 and Kwale/Kinondo/2460. On 3 February 2012, the plaintiff and defendant entered into an agreement in which the defendant was to hold the property in trust for the plaintiff and that upon sale of a portion thereof, the defendant would be entitled to 12% of the purchase price. It is pleaded that the defendant sold the plot Kwale/Kinondo/2460 for a sum of Kshs. 12,000,000/= but failed to remit the said sum less the agreed 12% while the defendant claims the other two subdivisions. The plaintiff avers that the defendant acted fraudulently in transferring the property into her name and also acted fraudulently in selling the land parcel No. 2460 without remitting the proceeds. In the suit, the plaintiff seeks an injunction to restrain the defendant from dealing with the land parcels No. 248 and 2459 and for a declaration that the interest of the defendant in the two parcels of land are extinguished. He wants orders to have the properties registered in his name.
3. In raising the preliminary objection, Mr. Abidha, learned counsel for the defendant, submitted that the plaintiff has no locus to raise an issue regarding the sale of the land parcel No. 755 or its subdivisions. He submitted that the plaintiff has no locus to raise issue about the transaction between the company and the defendant. He submitted that there is no complaint by the company and submitted that a director cannot sue on behalf of a company.
4. Ms. Mukoya, learned counsel for the plaintiff, submitted that the plaintiff is not suing on behalf of the company but in his own capacity for his own interest.
5. I have considered the preliminary objection.
6. It is clear to me that the plaintiff is suing on his own behalf, and if he is not, this can only come out at the hearing of the matter. From what I can see, the plaintiff wants to have orders that two properties, being subdivisions of the land parcel No. 755 which are registered in the name of the defendant be registered in his name. He has of course given a history of how these properties came to be registered in the name of the defendant and he has disclosed what he considers to be his stake in the said properties. I do not see the argument which is being raised that the plaintiff is suing on behalf of the company. If at all he is suing on behalf of the company, as I have said, this may emerge during a hearing, but at this stage, prima facie, what I can see is that he is suing on his own behalf.
7. I note that this is not the first time that the defendant is raising this issue. She raised it in a related matter, being *Mombasa ELC No. 442 of*

2017, *Thomas Schiering vs Nereah Michael Said & 2 Others*. In a ruling delivered on 16 September 2019, Yano J, dismissed the objection of the defendant. I do not know why the defendant wants to vex the plaintiff with the same type of objection that was heard and dismissed. I find this preliminary objection not only unmerited, but also an abuse of the court process, and for that I will dismiss it with punitive costs which will be payable by the defendant within the next 30 days. I think it is time that parties are deterred from raising all manner of objections however frivolous the same may be just for the sake of it. In my discretion, I assess the costs at Kshs. 15,000/=. In default of payment of the costs within the said 30 days this court reserves the discretion not to hear the defendant nor consider her pleadings.

8. Orders accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA this 13<sup>th</sup> day of November 2019.**

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**MUNYAO SILA,**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Abidha for the defendant.

No appearance on the part of M/s Omulama E. M & Co. for the plaintiff.

Court assistant; David Koitamet.