



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT**  
**AT MOMBASA**  
**CIVIL SUIT NO. 180 OF 2009**

**KENYA ANTI-CORRUPTION COMMISSION.....PLAINTIFF**

**VERSUS**

**ISMAIL KIPKEMBOI & 4 OTHERS.....DEFENDANTS**

**RULING**

**(Application to have a defendant struck out on the claim that no cause of action exists against him; the applicant having been named by the plaintiff as being party to a fraud that caused the loss of a house alleged to belong to the Government; clear that there is a cause of action against the applicant; application dismissed)**

1. The application before me is that dated 9 May 2019 filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The application seeks to have orders that the 3<sup>rd</sup> defendant be struck off from this suit.
2. The suit itself was commenced by way of a plaint which was filed on 9 June 2006. That plaint was amended on 29 March 2019. In the amended plaint, it is pleaded that the Government of Kenya reserved the land parcel MN/I/2405 (the suit land) for the construction of a house for members of staff of the then Directorate of Civil Aviation and/or the Meteorological Department and in 1977 a house was duly constructed. It is claimed that in the year 2002, the 4<sup>th</sup> defendant, who then served as the Commissioner of Lands, fraudulently prepared a grant for the same land in favour of the 1<sup>st</sup> defendant. In the year 2003, the land was transferred from the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant. The 3<sup>rd</sup> defendant/applicant is named as a director of the 2<sup>nd</sup> defendant.
3. In this application, it is contended that the suit does not disclose a cause of action against the 3<sup>rd</sup> defendant and should be struck out as against the 3<sup>rd</sup> defendant.
4. The application is opposed through the Replying Affidavit of Dedan Okwama, an investigator with the plaintiff, and he has deposed inter alia that the 3<sup>rd</sup> defendant is a necessary party.
5. I have considered the application and gone through the pleadings. It is the case of the plaintiff that among those who fraudulently colluded to cause the suit land to be registered in the name of the 1<sup>st</sup> and/or 2<sup>nd</sup> defendant is the 3<sup>rd</sup> defendant. There is therefore clearly a cause of action demonstrated against the 3<sup>rd</sup> defendant. It can only be after a full hearing of the case that we can tell whether or not the 3<sup>rd</sup> defendant is culpable, but clearly, there is a pleading directly affecting him which the plaintiff must be given an opportunity to ventilate.
6. I see no need to say more.
7. I find no merit in this application and it is hereby dismissed with costs.
8. Orders accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA this 6<sup>th</sup> day of November 2019.**

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**MUNYAO SILA,**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Makori for the plaintiff/respondent.

Mr Busyeka holding brief for Mr Oloo for the applicant and holding brief for Mr Magut for the 1<sup>st</sup> defendant.

Court assistant; David Koitamet.