

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C CASE NO. 1132 OF 2015

DAVID NJIHIA MBUGUA.....1ST PLAINTIFF

PAUL KIANIA MBUGUA.....2ND PLAINTIFF

VERSUS

MONICAH WANJIRU MBUGUA.....1ST DEFENDANT

JANE WAMBUI MBUGUA.....2ND DEFENDANT

RULING

Through the application dated 18/4/2019, the 2nd Defendant seeks to have the suit struck out together with **ELC Miscellaneous Application No. 290 of 2015 – David Njihia Mbugua and another v Monica Wanjiru Mbugua and another**. The application is made on the ground that this court lacks jurisdiction to determine this suit and that the Plaintiffs lack standing to prosecute this suit. ELC Misc. App. No. 290 of 2015 was an application filed seeking leave to institute a derivative suit. Jane Wambui Mbugua swore the supporting affidavit and deponed that this dispute relates to the internal affairs or management of the company; the directorship and shareholding in the company and conduct of the company's directors which are matters that fall within the jurisdiction of the High Court and not the Environment and Land Court.

The 1st Plaintiff swore the replying affidavit in opposition to the application to strike out the suit. He averred that the suit revolved around ownership of L.R. No. 1/543 Nairobi and that it raises issues of fraud in the transfer of this land. He deponed that the parties to the suit are family members and that they are also the directors and shareholders of J. M. Mugo Investment Company Limited. He maintained that the directors and shareholders of J. M. Mugo Investment Company Limited did not pass a resolution for the suit land to be transferred to the Defendants. He urged that the land transaction was executed fraudulently by the Defendants who are the majority shareholders in a manner that offends the company's assets and the minority shareholders.

The court has looked at ELC Misc. No. 290 of 2015 vide which the Plaintiffs sought leave to institute a derivative suit. It will serve no useful purpose to strike out the suit as the Defendants seek. Since it is the High court which has jurisdiction to deal with derivative suits under the Companies Act and disputes over the management of a company, ELC No. 1132 of 2015 and ELC Misc. Appl. No. 290 of 2015 are transferred to the High Court, Commercial and Tax Division for hearing and disposal. The costs of the application shall be in the cause.

Dated and delivered at Nairobi this 13th day of December 2019

K.BOR

JUDGE

In the presence of:-

Mr. J. Chigiti for the Plaintiff

Mr. W. Kabugu holding brief for Mr. G. Miyare for the Defendant

Mr.V. Owuor- Court Assistant