



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 87 OF 2017

MORRIS GUANTAI MUTHURIPLAINTIFF

VERSUS

SAMWEL BUNDI.....1ST DEFENDANT

ANNERITA GATAKAA MURIUNGI.....2ND DEFENDANT

MOFFAT KIMATHI SAMWEL.....3RD DEFENDANT

R U L I N G

1. The 1st and 2nd Defendant through their advocates, Masaviru & Co, Advocates have filed a Preliminary Objection on 07:04:17 where it is stated that:-

a) The suit offends Order 2 rule 15 (a) of the Civil Procedure Rules.

b) That the suit offends the provisions of Section 24, 25 and 26 (1) a, and (b) of the land Registration Act.

2. Directions were given by this Court for the Preliminary Objection to be argued by way of Written Submissions.

3. On the part of 1st and 2nd Defendant, it is argued that the Plaintiff ought to have pleaded the grounds upon which he is challenging the title of the two Defendants in accordance with provisions of Section. 26 of the Land Registration Act.

4. It is also averred that the Court lacks jurisdiction to hear the case as the remedy sought by the Plaintiff is outside the jurisdiction contemplated under article 162 (2) (b) of the Constitution.

5. Finally, the 1st and 2nd Defendant aver that the Plaint does not disclose any cause of action as required under order 2 rule 15 (a) of the Civil Procedure Rules.

6. In support of their arguments, the 1st and 2nd Defendants have relied on the cases of *Elijah Makeri Nyangwera vs. Stephen Munagi Njugana & Another ELC 609 (B) 12 Eldoret* and the case of *Emily Omara Wasike & Others v Patrick Juma were & Anor. 148 of 2013, Kakamega*.

7. The Plaintiff on the other hand avers that his claim is anchored under Section 28 of the Land Registration Act. It is averred that Plaintiffs claim is under a Customary Trust.

8. In *Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Ltd (1969) E.A 696 where Law J at Page 700* it was held that:-

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.

9. As submitted by the Plaintiff, if any fact has to be ascertained, then the Preliminary Objection should not be allowed.

10. Order 2 rule 3 of the Civil Procedure rules provides that :-

“3(1) Subject to the provisions of this rule 6, 7, and 8 every pleading shall contain and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim of defence, but not the evidence by which those facts are to be proved, and the statement shall be as brief as the nature of the case admits”.

11. The Plaintiff has submitted that their claim is based on Customary Trust. That is a fact which ought to have been pleaded. The final prayers in the plaint are also wanting in that Plaintiff is only asking for the Court to declare the agreement as null and void and not cancellation of the title deed.

12. Order 2 rule 15 of the Civil Procedure rules provides that:-

“15(1) at any stage of the proceedings the court may order to be struck out or amend any pleading on the ground that:-

- a) It disclose no reasonable cause of action or defence in law; or**
- b) It is scandalous, frivolous or vexatious: or**
- c) It may prejudice, embarrass or delay the fair trial of the action; or**
- d) It is otherwise an abuse of the process of the court.**

And may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

13. Thus the Court has discretion to invoke the aforementioned provisions to either strike out the suit or order for amendment.

14. Article 159 2 (d) of the Constitution stipulates that:

“Justice shall be administer without, undue regard to Procedural Technicalities”.

15. I note that Plaintiff filed his pleadings in person but he now has an advocate representing him. It would be rather harsh to shut him out at this early stage of the trial for none disclosure of the material facts.

16. The claim by Defendant that the Court lacks Jurisdiction is unfounded as the subject matter herein is on land.

17. I proceed to give directions as follows:-

1. Plaintiff is hereby allowed to amend his pleadings (file and serve) within 14 days to bring forth the material facts of his claim failure to which the suit will stand as dismissed.

2. Defence is allowed to bring forth their amended defence (if any) within 14 days from date of service of the amended Plaintiff.

3. Plaintiff is condemned to pay the costs of the Preliminary Objection.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 26th JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet

Ojiambo for Plaintiff present

Rimita H/B for Masaviro and Ketto for 1st and 2nd Defendant present 3rd Defendant absent

HON. L. N. MBUGUA

ELC JUDGE