



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 203 OF 2017

JOSEPH KAMITHA NJEHIA.....1ST PLAINTIFF
BEATRICE WAITHIRA KARANJA.....2ND PLAINTIFF
JANE WAMBUI MUNIU3RD PLAINTIFF
VERONICA NJERI MBUGUA4TH PLAINTIFF
CHARITY WANJIKU NJAU5TH PLAINTIFF
RICHARD KAMITHA MBURU6TH PLAINTIFF
EVERYLINE WANGUI7TH PLAINTIFF
LUCY NJOKI8TH PLAINTIFF
ESTHER WANJERI RICHARD9TH PLAINTIFF

VERSUS

LUCY WANJIRU NJOROGE.....1ST DEFENDANT
JOHN KIARIE NJOROGE
(Both sued in their capacities as the legal administrators of the Estate of
NJOROGE NGUGI (deceased).....2ND DEFENDANT

RULING

1. In the Notice of Preliminary Objection dated 21st September, 2017, the Defendants have averred that the suit is a nullity *ab initio* because it does not disclose the subject matter; that the suit does not disclose a cause of action and that the Defendants lack capacity to be sued in their individual capacity. The Defendants finally averred that the suit is meant to delay the hearing and finalization of the Succession matter that is pending in court.
2. The Notice of Preliminary Objection proceeded by way of written submissions. The Defendants' advocate submitted that the framing of the suit is premised on a subject matter that is not contested; that the suit land is alien to the Defendants and that the Defendants do not have a claim over L.R. No. 7340/196 but 7340/198.
3. The Defendants' advocate submitted that the action before the court is in their individual names and not as administrators of an Estate and that the suit is frivolous and should be dismissed. The Defendants' advocate finally deponed that the Defendants are involved in Succession Cause No. 642 of 2013 and that this suit is meant to delay the Succession Cause.
4. On the other hand, the Plaintiffs' advocate submitted that the Notice of Preliminary Objection is incompetent; that the legal principles to be followed when raising a Preliminary Objection are now settled and that a Preliminary Objection should only raise points of law which have been pleaded or which arise from pleadings.

5. Counsel submitted that the facts pleaded in the Plaintiff have been rebutted; that there is a dispute as to whether or not parties are laying a claim over the same parcel of land on the ground and that the court will have to delve into the evidence to answer that issue.
6. The Plaintiffs' counsel submitted that the Defendants have been sued because they trespassed on the suit land and that the amended Plaintiff cures the issue of the capacity in which the Defendants have been sued.
7. This suit was commenced by way of a Plaintiff dated 2nd May, 2017. In the Plaintiff, the Plaintiffs are seeking for a declaration that they are the legal and beneficial owners of parcel of land known as L.R. No. 7340/198, Mavoko.
8. The Plaintiffs have pleaded that in their Summons for Confirmation of Grant, the Defendants illegally included the suit property as part of the Estate of their late father.
9. The Defendants filed a Defence in which they denied the allegations in the Plaintiff. In the said Defence, the Defendants did not plead that they own L.R. No. 7340/196 and not L.R. No. 7340/198.
10. The issue of whether the Defendants, or the Estate they represent is entitled to L.R. No. 7340/196 or L.R. No. 7340/198, or whether the two suit properties are the same on the ground can only be determined upon the taking of evidence. Consequently, the Notice of Preliminary Objection filed by the Defendants offends the rules pertaining to a Preliminary Objection. As was held in the case of ***Mukisa Biscuit Manufacturing Co. Limited vs. West End Distributors Limited (1969) E.A 696***, 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.
11. Having not pleaded in the Defence that they are entitled to L.R. No. 7349/196 and not L.R. No. 7349/198 and in view of the fact that the two suit properties might be relating to the same land on the ground, I find that the Notice of Preliminary Objection is incompetent.
12. The Plaintiffs have pleaded in the body of the Plaintiff that the Defendants are the administrators of the late Njoroge Ngugi. The Plaintiffs have gone further to amend the Plaintiff to plead that indeed the Defendants are sued as the administrators of the Estate of Njoroge Ngugi (*deceased*). Consequently, the issue of the Defendant's *locus standi*, who have admitted that they are the administrators of the late Njoroge Ngugi, does not arise.
13. For those reasons, I dismiss with costs the Defendants' Notice of Preliminary Objection dated 21st September, 2017.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4TH DAY OF MAY, 2018.

O.A. ANGOTE

JUDGE