



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**ELC NO. 296 OF 2017**

**JOSHUA KIPTUI KIPROP.....PLAINTIFF**

**VERSUS**

**AGRICULTURAL FINANCE CORPORATION.....1<sup>ST</sup> DEFENDANT**

**GILBERT KIMALEL.....2<sup>ND</sup> DEFENDANT**

**LUKA CHEMWENO.....3<sup>RD</sup> DEFENDANT**

**JOHANA TELE.....4<sup>TH</sup> DEFENDANT**

**LARI KIPTUM CHEUM.....5<sup>TH</sup> DEFENDANT**

**SILA KIMUGE.....6<sup>TH</sup> DEFENDANT**

**TABITHA CHEUM.....7<sup>TH</sup> DEFENDANT**

**JIMMY SONYO.....8<sup>TH</sup> DEFENDANT**

**RULING**

This is the ruling in respect of an application dated 17<sup>th</sup> January 2018 brought by way of Notice of Motion by the defendant/applicants for orders:

1. Spent
2. That this Honourable court be pleased to strike out the names of the 2<sup>nd</sup> to 8<sup>th</sup> defendants in this suit.
3. That the Honourable court be pleased to dismiss the suit against the 2<sup>nd</sup> to 8<sup>th</sup> defendants.
4. The costs be awarded to the defendants.

This matter came up for hearing of the defendant's application on 14<sup>th</sup> March 2018 when Counsel for the 2<sup>nd</sup> to 8<sup>th</sup> defendants argued the application. Counsel for the 1<sup>st</sup> defendant also supported the application for the dismissal of the plaintiff's suit.

It was Counsel's submission that the names of the 2<sup>nd</sup> to 8<sup>th</sup> defendants should be struck out of this suit and that the plaintiff's suit be dismissed as it does not disclose a cause of action against the defendants.

It was further Counsel's submission that the plaintiff had filed a similar suit being Eldoret ELC Misc No. 2 of 2015 which was heard and dismissed. He stated that after the dismissal of the said application by the court the plaintiff filed another similar application which amounts to an abuse of the court process,

Counsel submitted that the plaintiff filed this suit in 2017 and has never taken any steps and has not filed any reply to this application even

though he was served. Counsel urged the court to strike out the defendants' names and dismiss the plaintiff's suit altogether.

Counsel for the 1<sup>st</sup> defendant associated himself with the submissions of the 2<sup>nd</sup> to 8<sup>th</sup> defendants' counsel and urged the court to allow the application as prayed as the plaintiff's suit is an abuse of the court process.

### **Analysis and determination**

This is an application for striking out of the names of the defendants and the suit as it does not disclose a cause of action against the defendants. The plaintiff filed this suit against the defendants in 2017.

It is evident for the pleadings of both parties that a similar suit had been filed being Eldoret E &L Misc. application No. 2 of 2015 which dealt with this matter and the same was dismissed. In fact the plaintiff had sought for leave to file a suit out of time which was declined. The plaintiff decided to file another suit after the refusal of the court to grant the leave. This is clearly an abuse of the court process.

The plaintiff was served with a hearing notice for the application but did not attend or file any reply to the application. The application is therefore not opposed. I have looked at the pleadings together with the documents in support of the application and the submissions of both counsel and I am of the view that this application has merit and the same is allowed as prayed.

Courts should be slow at striking out suits but should also guard against the abuse of court process. This is one such case where the abuse is glaring and the court cannot turn a blind eye to such abuse. The upshot is that the plaintiff's case is dismissed with costs to the defendants.

**Dated and delivered at Eldoret this 12<sup>th</sup> day of June, 2018.**

**M.A ODENY**

**JUDGE**

Ruling read in open court in the presence of Mr. Omboto holding brief for Mr. Martim for 2<sup>nd</sup> to 7<sup>th</sup> defendants/Applicants and in the absence of the Plaintiff and the 1<sup>st</sup> defendant.