



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI LAW COURTS**

**ELC NO. 1097 OF 2015**

**GARDEN CHICKEN LIMITED.....PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL & 7 OTHERS.....DEFENDANT**

**RULING:**

1. This is a ruling in respect of a Notice of Motion brought by the sixth defendant. The application is brought under the provisions of Order 2 rule 15 1(a) of the Civil Procedure Rules. The application seeks striking out of the suit against the sixth defendant. The grounds in support of the application are that the plaintiff's claim is based on loss of LR No.7149/115; that the sixth defendant was not privy to the contract between the plaintiff and the sixth defendant as regards the purchase of the aforesaid property; that the plaint is fatally defective and does not disclose a reasonable cause of action against the sixth defendant and that the plaintiff's claim does not relate to use, title and occupation to land and as such the Environment and Land Court does not have jurisdiction to entertain the matter.
2. The application by the sixth defendant was opposed by the plaintiff based on grounds of opposition filed in court on 16<sup>th</sup> May 2018 and a replying affidavit sworn on 14<sup>th</sup> May 2018. The plaintiff contends that the sixth defendant was the registered owner of LR No. 7149/115 which is the basis of the plaintiff's claim when the property was sold in a public auction arising from one of the suits filed against the sixth defendant in Machakos High Court. The sixth defendant was a beneficiary of the proceeds of the auction. The plaintiff herein was the highest bidder in the auction.
3. The mother title from where title to the property giving rise to this suit arose was annulled because it was found that the subdivisions had been carried out fraudulently. This effectively rendered the plaintiff's title null and void hence this claim. The plaintiff therefore contends that there is no way the suit against the sixth defendant can be struck out.
4. I have considered the applicants application as well as the opposition to the same by the sixth defendant. The only issue for determination herein is whether the plaintiff's suit is so hopeless as to be struck out in a summary manner. The submissions by counsel for the parties during the hearing of this case as well as perusal the pleadings herein show that this is not an application which should be allowed. The claim against the sixth defendant should not be struck out because that is the genesis of the plaintiff's claim and there is no way an effective remedy can be granted without the presence of the sixth defendant in this suit.
5. The sixth defendant was the registered owner of LR No.7149/115 which was sold in a public auction pursuant to one of the suits filed against the sixth defendant in Machakos High Court. The defence by the third defendant has shown how the proceeds of the sale from the auction were shared. The sixth defendant was a beneficiary of the proceeds. Though the plaintiff's claim mainly focuses on the second defendant and the Attorney General, the plaintiff has made an alternative prayer which also targets the sixth defendant. The claim in this suit flows from title from land and this court has the jurisdiction to entertain the same. The sixth defendant cannot therefore claim that this court lacks jurisdiction.
6. The power to strike out pleadings is invoked sparingly and in the clearest of cases where it is plain that not even an amendment can save the claim. The plaintiff has relied on the case of **Odhiambo Achillah T/a Achilla T.O & Co.Advcoates Vs Kenneth Wabwire Akide T/A Akide & Co. Advocates and 3 others (2015) eKLR**. This case has cited cases on who should be joined as a party to a suit and on striking out pleadings.
7. If a pleading shows a semblance of a cause of action, it ought to be left to be ventilated during the hearing. The court is not expected to examine closely the documents presented so as to determine whether the pleading discloses a cause of action. Any pleading with a semblance of a cause of action ought to be given a chance to be heard. In the instant case, the case against the sixth defendant is not so hopeless that not even an amendment can breathe life into it. I therefore find that the sixth defendant's application lacks merit. The same is hereby dismissed with costs to the plaintiff.

It is so ordered.

**Dated, and Signed at Nairobi on this 31<sup>st</sup> day of July 2018.**

**E.O.OBAGA**

**JUDGE**

Delivered in the presence of:-

Mr Kamau for Ndundu for 1<sup>st</sup> and 2<sup>nd</sup> Defendant

Mr Kitheka for Mr Ombati for the 3<sup>rd</sup> Defendant

Ms Wanjala for Mr Thuita for the 6<sup>th</sup> Defendant

Mr Akwabi for Mr Lutta for the Plaintiff

Court Assistant: Hilda

**B.M.EBOSO**

**JUDGE**