



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 103 OF 2018 (OS)

NANCY WANGARI KAMAU.....PLAINTIFF

VERSUS

THE NATIONAL LAND COMMISSION.....1ST DEFENDANT

HANNAH WANJIRU KIRUI.....2ND DEFENDANT

REGISTRAR OF LANDS, KAJIADO.....3RD DEFENDANT

RULING

What is before Court for determination is the 2nd Defendant Notice of Preliminary Objection dated the 17th July, 2018, which is based on the following grounds:-

1. That this Honourable Court lacks competent jurisdiction to hear and determine this matter.
2. That the 2nd Defendant's seeks dismissal of the suit with costs.

Both the Plaintiff and the 2nd Defendant filed their respective submissions that I have considered.

Analysis and Determination

Upon consideration of the Notice of Preliminary Objection dated 17th July, 2018, pleadings filed as well as the submissions, the only issue for determination is whether this court has jurisdiction to hear and determine this suit.

The Plaintiff had filed the instant suit seeking for injunctive orders against the Defendants in respect of various parcels of land including NGONG/ NGONG/ 33374 and NGONG/ NGONG/ 33373 hereinafter referred to as the 'suit lands'. The Plaintiff is also seeking injunctive orders against the 2nd Defendant in respect of motor vehicles. She contends that the suit lands belonged to their deceased husband's estate and an administrator is yet to be appointed. Further, that the 1st Defendant has gazetted the suit lands for compulsory acquisition and intends to compensate the 2nd Defendant to her exclusion. The 2nd Defendant filed the instant Preliminary Objection and insists the Court does not have jurisdiction to handle this matter as it falls within the ambit of the Law of Succession Act which is the preserve of the High Court or the Chief Magistrate's Court. I note the 2nd Defendant contends that the Plaintiff has filed citation at the Chief Magistrate Court Ngong which she is not opposed to. Further, the 2nd Defendant has admitted in her replying affidavit that the suit lands were registered in her name before their husband's demise.

In the case of **Mukhisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Company Limited (1969) EA 696**; the Court held that **'A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.'**

Further in the Court of Appeal decision of **RAMJI MEGJI GUDKA LTD -Vs- ALFRED MORFAT OMUNDI MICHIRA ;& 2 OTHERS [2005]** eKLR it was held as follows:

"In our view, the power to strike out pleadings must be sparingly exercised. It can only be exercised in clearest of cases. '

I note the two suit parcels of land are currently registered in the 2nd Defendant's name hence the issue of the Law of Succession does not

arise. Further, I note the Plaintiff is disputing the fact that the 2nd Defendant is to be exclusively compensated for the compulsory acquisition of the suit lands by the 1st Defendant. Section 13 of the Environment and Land Court Act is clear in terms of the jurisdiction of the Environment and Land Court to include issues of compulsory acquisition of Land. Further, the 2nd Defendant has not demonstrated what prejudice she will suffer if the suit was set down for hearing on its merits. It is against the foregoing and relying on the above cited judicial authorities that I hesitate to strike out this suit summarily and direct that this suit be set down for hearing and heard on its merits.

In the circumstances, I find the Preliminary objection unmerited and will disallow it.

Costs will be in the cause

Dated signed and delivered in open court at Kajiado this 10th day of December, 2018.

CHRISTINE OCHIENG

JUDGE