



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CAUSE NO. 18 OF 2014

KENYA AFRICAN NATIONAL TRADERS &

FARMERS UNION (KANTAFU)PLAINTIFF

VERSUS

KOMA ROCK RANCHING & FARMING

CO-OPERATIVE LIMITED.....DEFENDANT

RULING

1. By a Plaint dated 6th March, 2014, the Plaintiff/Respondent claims **LR.NO. Donyo Sabuku/Koma Rock Block 1/599** (suit land) from the Defendant/Applicant. The Plaintiff claims to have bought the same from one Rose Mwanzia but the Defendant unlawfully got it registered as the proprietor.
2. The Defendant has denied the said allegations via a Defence dated on 7th April, 2014 and filed on 8th April, 2014.
3. It is on the basis of the aforesaid pleadings that the Defendant lodged the Chamber Summons dated 26th May, 2014 to strike out the instant suit with costs. The Application is predicated on the grounds that the suit is frivolous, vexatious and an abuse of the court process thus untenable in law.
4. The Application is anchored on the provisions of **Order 2 Rule 15(1) (a)(b) and (d)** of the **Civil Procedure Rules 2010**.
5. The Application is also supported by the Affidavit sworn by Benard Nzioki Maembe sworn on 26th May, 2014.
6. The Applicant's case is that the Plaintiff's claim is based on a sale of land agreement between the Plaintiff and one Rose Mwanzia in which the Applicant is not a party; that the suit land is registered in the Applicant's name as legal owner and that the Plaintiff ought to sue Rose Mwanzia and not the Applicant.
7. The Applicant avers that it never allotted the suit land to any of its members nor was the said Rose Mwanzia its member.
8. The Application has been opposed by the Respondent via the Affidavit of Kimaru Wanyoike sworn on 10th June, 2014.
9. In a nut shell, the Respondent's advocate submitted that the Application is misconceived and the

supporting material annexed to the Application does not meet the threshold for striking out pleadings. The Respondent thus urge the court to dismiss the Application and hear the matter on merit.

10. **Orders 2 Rule (b) and d** of the **Civil Procedure Rules 2010** mandates the court to strike out pleadings which are frivolous, vexatious and an abuse of the court process.

11. In the instant case, Mr. Nthiwa for the Applicant relied on the case of **MILIMANI HCC NO. 101/01 RAPHAEL M. WARARI VS. OLKEJUADO COUNTY COUNCIL ELDERS** in which KimondoJ, held that *“a frivolous suit is a hopeless one and has no legs to stand on”*.

12. Counsel submitted that the Respondent is seeking to enforce a contract or agreement against a person who was not a party to the same agreement.

13. Mr. Nthiwa also relied on the case of **HAGGAI TAMBO & OTHERS VS KESRECT AGENCY LTD & OTHERS ELC MALINDI NO. 62 OF 2014** which quoted the case of **MWANGI VS BRAEBURN LTD (2004) EA 196** where the Court of Appeal held as follows:

“as a general rule a contract only effects parties to it, and cannot be enforced by or against a person who is not a party...”

14. The Applicant’s Counsel also relied on **Section 76(1)** of the **Cooperative Societies Act** and submitted that a claim between a member or a past member and a society ought to be taken to the cooperative tribunal. The Applicant’s Counsel urged the court to strike out the suit.

15. Mr. Ngolya for the Respondent submitted that the Application is unmeritorious and in competent and that the Application has not met the threshold for striking out a pleading under the cited grounds. Counsel cited the case of **MPAKA ROAD DEVELOPMENT CO. LTD VS ABDUL GAFUR KANA MILIMANI HCC 318/00** which defined frivolous to mean lacking seriousness, and vexatious if it annoys or tends to annoy the Respondent. Counsel submitted that the instant suit is neither frivolous nor vexatious. Counsel submitted that the pleadings and the supporting documents disclose a very serious case which need to be interrogated during the hearing of the suit.

16. As for the provisions of **Section 76 (1)** of the **Cooperative Societies Act**, the Respondent’s Counsel submitted that the same applies to members and society or its past members of which the Plaintiff is not and was not at anytime.

17. After going through the Affidavit, pleadings and the submissions, the court finds the singular issue for determination is whether the Application and the grounds thereof meet the threshold of striking out pleadings.

18. The Plaintiff’s claim is hinged on the fact that after buying the suit land from Defendant member No.125 and taking possession of the same, the Defendant refused to effect transfer of the land to it without any lawful justification.

19. The Defendant instead got the title of the said parcel of land registered in its name.

20. The core issue at trial will therefore be whether the Defendant’s acts are lawful and whether the Plaintiff has equitable interest in the suit land.

21. The Applicant views the claim in the prism of enforcement of the Agreement between the Plaintiff and Rose Mwanzia.

22. The Plaintiff is not complaining of the breach of agreement by Rose Mwanzia but that after the terms of the agreement were executed via payment of consideration and giving of possession, the Defendant/Applicant refused to have Rose Mwanzia’s stake on the land transferred to the Plaintiff.

23. A frivolous claim is one which is hopeless and has no legs to stand on. Refer to **RAPHAEL MUGWANJA WARARI** supra.

24. It has to be a baseless claim. The Plaintiff has annexed an agreement which shows it purchased the suit land from Rose Mwanzia, member No.125 of the Defendant. By a letter dated 28th September, 1993, the Defendant approved the sale in a meeting held on 3rd September, 1993.

25. If Rose has forged the attached documents showing that they emanated from the Defendant, the Defendant would have said so or even utilized the services of the police. Is this a claim which can be held to be baseless, hopeless and with no legs to stand on? The answer is no.

26. The suit is also not vexatious. It is not annoying or intended to annoy by any standard.

27. In the case of **DT DOBIE CO. LTD VS MUCHINA (1982) KLR 1** the Court of Appeal held as follows: “ *if a suit shows a mere semblance of a cause of action, ... it ought to be allowed to go forward for a court of justice ought not to act in darkness without full facts of a case before it*”.

28. We need to know the whole truth of the instant dispute without pre-maturely terminating it.

29. The provisions of **Section 76(1)** of the **Cooperative Society’s Act** are not applicable as the Plaintiff is not a Defendant’s member, present or past. In any event, under **Section 13(7)** of the **Environment and Land Court Act**, the Environment and Land Court has the mandate to entertain disputes on occupation, use and title to land. That is the issue before the court.

30. For those reasons, the Chamber Summons dated 26th May, 2014 is dismissed with costs.

It is so ordered.

Dated and Delivered at MACHAKOS this 27TH day of JANUARY 2017.

O. A. ANGOTE

JUDGE