



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 83 OF 2013

DOMINIC MBURU NJUGUNA.....PLAINTIFF

VERSUS

PETER NJUGUNA GITAU.....DEFENDANT

RULING

(Application to amend defence; application filed by a person who has described himself as holding a power of attorney; no power of attorney annexed; application struck off with costs)

1. The application before me is that dated 9 March 2012 allegedly filed by the 2nd defendant. I say allegedly for reasons that will shortly become clear. The said application seeks to amend the defence filed by the 2nd defendant so as to include a counterclaim.

2. The suit itself was commenced on 13 January 2010. The plaintiff claims to have purchased on 2 July 2002, from the 1st defendant, the land parcel Nakuru Municipality Block 16/286/15 (new number Nakuru Municipality Block 16/634). He has averred that he moved into the land and has made permanent structures. He has pleaded that on 4 January 2010, the 2nd defendant came to the land and claimed that the same had been sold to him by the 1st defendant. It is that action which prompted the plaintiff to file suit. In the suit, the plaintiff wants a declaration that he is the lawful owner of the suit land and cancellation of the title issued to the 2nd defendant.

3. The 2nd defendant filed defence vide which he inter alia pleaded that he purchased the suit land from the 1st defendant on 15 May 2002. On 3 July 2007, he was issued with a certificate of lease. He pleaded that he is entitled to ask the plaintiff to vacate the suit land.

4. I started this ruling by stating that the application herein has allegedly been filed by the 2nd defendant. I say so because the supporting affidavit to this application has been sworn by one Joseph Kariithi. He has deposed that he has authority to swear the supporting affidavit by virtue of a power of attorney issued to him by the 2nd defendant. However no power of attorney was annexed to the supporting affidavit. I therefore cannot hold that the said Joseph Kariithi has capacity or power to file any papers or applications on behalf of the 2nd defendant. I have absolutely no document that the 2nd defendant has donated any power of attorney to the said Joseph Kariithi or to any other person. The indication from the documents filed herein is that the 2nd defendant, Gatimu Kariithi, is not acting through any agent other than his advocates on record.

5. I cannot allow a stranger to file applications on behalf of a litigant. There being no proof that Joseph Kariithi holds any power of attorney, I have little option but to strike out this application. The costs will

be paid by the said Joseph Kariithi.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 17th day of May 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In the presence of :

Mr. Okwengu holding brief for Mr. Ndubi for the 2nd defendant.

Other parties and counsels: absent

Court Assistant : Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU