



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
MILIMANI LAW COURTS
ELC. CASE NO. 802 OF 2014

ROWENA PEASE

Suing on her own behalf and also as the Legal Administrator of the Estate of
JANE ANYONG OWALO..... PLAINTIFF

VERSUS

GURMAIL SINGH GATA – AURA 1ST DEFENDANT

TEJINDER SINGH GURMAIL SINGH.....2ND DEFENDANT

HARPINDER SINGH GURMAIL SINGH.....3RD DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 12th November 2014 in which the Plaintiff/Applicant seeks for the Defendants' Statement of Defence be struck out and the matter be fixed for formal proof.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Plaintiff/Applicant, Rowena Pease, sworn on 12th November 2014 in which she averred that she and her late mother Jane Anyango Owalo entered into a Sale Agreement with the 1st Defendant and the late Mohinder Kaur Gata Aura for the purchase of a portion of L.R. No. 12661/31 described as Plot A for the purchase price of Kshs. 1,600,000/- which she fully paid. She added that to complete the sale, the Vendors were to subdivide the parent property, obtain the Deed Plan and the Title in respect thereof. She further added that she and her late mother were granted vacant possession of the suit property in the year 2004 and she is in occupation to date. She averred further that since the demise of Mohinder Kaur Gata Aura, the Defendants have neglected to complete the sale. She further stated that the Defence filed by the Defendants raises no plausible defence to her claim because it is a mere denial devoid of any specific facts, she has already paid the entire purchase price of Kshs. 1,600,000/-, there exists no agreement to pay a further sum of Kshs. 600,000/-, she is a stranger to the said Wellington Olale Omodho and that by a letter dated 27th November 2005 the 1st Defendant confirmed that the balance due was Kshs. 530,000/- which was paid vide a cheque dated 20th March 2006. She pointed out that the only outstanding issue is for the Defendants to pursue Confirmation of Grant of Letters of Administration and thereafter obtain the title deed for the suit property.

The Application is uncontested. Despite being duly served with the Application, the Defendants failed to file a response thereto.

The issue I am called upon to determine is whether or not to strike out the Statement of Defence filed by the Defendants. The applicable law is to be found in **Order 2 Rule 15(1)** of the **Civil Procedure Rules, 2010** which states as follows:

“At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that –

- (a) It discloses no reasonable cause of action or defence in law; or**
- (b) It is scandalous, frivolous or vexatious; or**
- (c) It may prejudice, embarrass or delay the fair trial of the action;**
- (d) It is otherwise an abuse of the process of the court,**

And may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”

Going by the above provisions, I have no doubt that this court has power at any stage of the proceedings to strike out a pleading, including a plaint or defence. However, in what circumstances can the court properly exercise such power? In the case of **Sunday Principal Newspaper Limited [1961] 2 ALL E.R. 758**, the principles for striking out were expressed thus,

“It is established that the drastic remedy of striking out a pleading or part of a pleading, cannot be resorted to unless it is quite clear that the pleading objected to discloses no arguable case. Indeed it has been conceded before us that the rule is applicable only in plain and obvious cases....”

The Plaintiff has stated that the Statement of Defence filed by the Defendants discloses no defence to her claim over the suit property. The impugned Defence is the one dated 17th July 2014 and filed on 22nd July 2014. The impugned Defence raises the issue of the Plaintiff not having paid the agreed purchase price within the agreed timelines and further alleging that an agreed further sum of Kshs. 600,000/- was not paid by the Plaintiff. The Defendants further stated that the only remedy available to the Plaintiff is not specific performance which she seeks but rather rescission of the Sale Agreement.

There is no question that the Plaintiff did not strictly adhere to the stipulated timelines for payment of the purchase price for the suit property in the Sale Agreement. The repercussions of that delayed payment and whether any late payment interest is payable would have to be determined by the court through the main hearing of this suit. Whether the Plaintiff is entitled to the remedy of specific performance is also one of the main issues that would have to be ventilated at the main hearing of this suit. To my mind, this case cannot be categorized as a plain and obvious case in which the Statement of Defence should be struck off and judgment entered in favour of the Plaintiff. Arising from this finding, this Application is hereby dismissed. The Plaintiff is at liberty to fix the suit for hearing at the earliest opportunity to allow this court to fully and finally hear and determine this suit after hearing the evidence from both sides.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF MAY 2017.

MARY M. GITUMBI

JUDGE