



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 186 OF 2017

FORMERLY NAKURU ELC NO. 396 OF 2016

NGENDA LOCATION RANCHING CO. LTD.....PLAINTIFF

-VERSUS-

MICHAEL KOLEKEN KOIKAI.....DEFENDANT

RULING

The Plaintiff/Applicant commenced the suit herein by way of plaint and on the same date also filed a Notice of Motion under a certificate of urgency seeking temporary orders of injunction against the Defendant/Respondent.

The Defendant/Respondent herein had opposed the said Notice of Motion by way of a Replying Affidavit, however, before the said Notice of Motion could proceed for hearing the Defendant/Respondent filed a Notice of Preliminary Objection dated 15th March, 2017 praying for inter alia that the said Notice be struck out with costs to the Defendant.

The Defendant/Respondent had raised the said Preliminary Objection on the following points of law.

- i. That the Notice of Motion and Preliminary Objection as filed were not agreed by the Plaintiff/Applicant's Advocates.**
- ii. That the Filed Supporting Affidavit was not executed by the deponent.**
- iii. That the Supporting Affidavit was not commissioned by a Commissioner for oaths before attestation.**

The upshot of the Defendant/Respondent's Preliminary Objections based on the above grounds was that the Notice of Motion as filed was defective and thus the same be struck out.

The Defendant/Respondent opposed the said application by filing a Replying Affidavit stating that the said Preliminary Objection is misconceived, frivolous, and incompetent.

The Defendant/Respondent contented that all documents filed in respect of the application were duly signed and commissioned appropriately and to that effect he attached the Application together with the Supporting Affidavit that were duly signed.

The Counsel for the parties canvassed the application before me on 13th August, 2014. Mr. Andama for

the Defendant/Respondent stated that he will rely on the case of Mukisa Biscuits Ltd and Order 2 Rule 6 of the Civil Procedure and section 5 of chapter 15 of laws of Kenya. In his submissions Mr. Andama stated that the Application is incompetent and is incapable of any amendment and therefore the same be struck out.

Ms. Morande appearing for the Plaintiff/Applicant opposed the application he contended that all the documents were signed.

Upon hearing counsel for the parties, this is a matter within which could be disposed off easily by looking at the pleadings on the court's file.

I have perused the court file and contrary to what the Applicant states, I have seen that the certificate of urgency, the Notice of Motion and the Supporting Affidavit filed in court on the 26th September, 2016 are all duly signed, properly attested and commissioned appropriately.

In view of the above position I hold that the Preliminary Objection has no merit and I dismiss the same with no orders as to costs.

Dated, Signed and Delivered in open court at NAROK on this 5th day of May, 2017

Mohammed Noor Kullow

Judge

In the presence of:-

Mr. Andama for the Defendant/Applicant

Ms Maritim holding brief for Ms Morande for the Plaintiff/Respondent

CA:Chuma