



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 222 OF 2014**

**LUCY WANGARI MUCHIRI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**JOHN NGANGA KIHURA.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**MARGARET MWIHAKI KIHURA.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**THE COMMISSIONER OF LANDS.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**PHILIP ULUMA(THE LIQUIDATION NGUNDU**

**FARMERS CO-OP SOCIETY LIMITED.....5<sup>TH</sup> DEFENDANT/RESPONDENT**

**STEPHEN KIHARA MUCHUI t/a**

**MUCHUI & COMPANY ADVOCATES.....6<sup>TH</sup> DEFENDANT/APPLICANT**

**MAWEGA COMPANY LIMITED.....7<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. The Sixth Defendant/Applicant brought a chamber summons dated 17<sup>th</sup> April 2015 in which he seeks to have the Plaintiff's suit against him struck out of being scandalous, frivolous and vexatious. The applicant is a lawyer practising under the name of Muchui & Co. Advocates. The applicant had been appointed by the management commission of Ngundu Farmers Co-operative Society with specific instructions to receive letters of subdivision scheme approval of the society's parcel of land known as LR No. 11593 once the said letters were issued by the commissioner of Lands and to pursue the processing of leasehold titles for the allottees of the said letters after each allottee paid the Government dues shown in the said letters and agreed fees.

2. In the course of discharging his duties, the Plaintiff/Respondent visited his offices seeking to know the position regarding Parcel No. 5 which the respondent claimed had bought from one Susan Ngendo in 1989. The applicant's staff checked the records they held but could not see the Respondent's name. Instead the records held in the applicant's office showed that the said parcel belonged to Virginia

Wanjiku Leo whose sub-division scheme approval letter was Nairobi Block 126/3. The applicant accordingly advised the respondent to follow up her case with the society.

3. The applicant later found out that the respondent had sued him claiming that he colluded with the society members to defraud her of her plot which was given to the first and second plaintiffs in this case. The applicant contends that he was appointed as the society's lawyer on 29<sup>th</sup> October 1992 with a specific mandate as set out in Paragraph 1 hereinabove. That he was not in charge of compiling a list of the society's members and could not therefore know who was a member or not a member. That he only processed leasehold certificates in accordance with letters of sub-division scheme approval which were brought to his office by the chairman of the society.

4. The applicant further contends that at first he did not know how the first and second defendants obtained title to the suit land. He only learnt later that the two were administrators of the estate of Virginia Wanjiku Leo after reading their defence and witness statements which had been served upon him. He states that he still has the letter of sub division scheme approval for Virginia Wanjiku Leo in his offices and that he did not know that the said Virginia Wanjiku Leo had passed on.

5. The respondent opposed the applicant's application based on a replying affidavit sworn on 14<sup>th</sup> October 2015 and filed in court on the following day. The respondent contends that the applicant is trying to mislead the court as to the extent of his mandate. That the applicant's mandate included issuance of letters of allotment. That the applicant is the one who was given the original registers containing the names of the shareholders of the society.

6. The respondent goes on to state that after she purchased the suit land, she took possession and briefly did small scale farming until 1994 when she left for England. When she returned, she found that her name had been replaced with that of Virginia Wanjiku Leo. That she took up the issue with the applicant who kept promising her to visit and see if the said Virginia Wanjiku Leo could surface. That the applicant pretended not to know Virginia Wanjiku Leo but that the truth is that Virginia Wanjiku Leo and the applicant come from the same location of Ikinu in Githunguri Division of Kiambu County. That the applicant is the one who determined who was to get title and that he decided to defraud her of her plot in order to benefit someone from his village. That the applicant was negligent in the discharge of his duties.

7. I have carefully considered the applicant's application as well as the opposition thereto by the respondent. I have also considered the submissions by the applicant and the respondent. There is no contention that the applicant was acting as an agent of Ngundu Farmers Co-operative Society. The society has since been put under liquidation and a liquidator has been sued in this case as the fifth defendant. The issue which then arises is whether an agent of a disclosed principal can be sued. The law of agency is that an agent of a disclosed principal cannot be sued. The exception to this rule however is that such an agent of a disclosed principal can be sued if it is shown that the agent has been involved in fraud.

8. In the instant case, the principal of the applicant has already been disclosed. This principal is the one which was later put under liquidation and the liquidator has been sued as fifth defendant. This then leads to another issue for determination which is whether there is any prima facie case of fraud against the applicant to warrant him to be sued.

9. The respondent has made allegations that the applicant conspired to give her land to his village mate Virginia Wanjiku Leo. There is absolutely no evidence to back this allegation. The mandate of the applicant was clear. He received letters of approval of sub-division scheme and was to process leasehold titles in accordance with the list. There is nothing to show that he was involved in compilation of the register. The minutes which were annexed to the respondent's affidavit which seemed to blame the applicant cannot be used to attribute fraud on the part of the applicant. Here we are dealing with a particular case. This is the case of the respondent. The applicant was not in the meeting and did not raise any issue in that meeting touching on the applicant. The complaints from shareholders were that they did not even know how the applicant was appointed. These minutes cannot be used by the applicant to claim that there was fraud on the part of the applicant in as far as the respondent's case is concerned.

10. The first and second defendants are clear on how they obtained title to the suit property. They obtained the suit property through the assistance of the fifth defendant upon them showing that they were children of the late Virginia Wanjiku Leo who had letters of administration in respect of her estate. The registration process was not done in the offices of the applicant. The process was done by Kulecho & Co. Advocates. The applicant did know how this was possible because he still has the letter of sub-division scheme approval in favour of the late Virginia Wanjiku Leo.

11. The respondent has not shown that the applicant was involved in any alterations of any documents which conferred title upon the first and second defendant. The respondent is blaming the first and second defendants together with the fifth defendant for obtaining title to the suit property. In the plaint, the respondents claim that the first, second and fifth defendants conspired with the applicant to misrepresent ownership details to the third defendants. That the applicant colluded with the first and second defendants to interfere with the original register. The documents in this case show that the first and second defendants did not involve the applicant in acquisition of title to the suit property. It is therefore clear that respondent has no case against the applicant. Her case is clearly aimed at scandalising the applicant by claiming that the applicant went out of his way to assist his village mates. This suit cannot stand against the applicant. I find that the applicant's application has merits. The same is allowed with the result that the respondent's suit against him is struck out with costs to the applicant.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **27<sup>th</sup>** day of **June, 2017**

**E.O. OBAGA**

**JUDGE**

In the presence of:-

M/s Wanjiru for 6<sup>th</sup> defendant who also holds brief for Mr Kamau for 1<sup>st</sup> and 2<sup>nd</sup> defendants.

**E.O. OBAGA**

**JUDGE**