



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 80 OF 2016

JOSEPH KAZUNGU MWANGI..... PLAINTIFF

VERSUS

JOSEPH ODERO OBWORE & 11 OTHERS.....DEFENDANTS

RULING

1. By an application dated 28/3/2017, the applicant prays for an order striking out the suit herein with costs. The grounds on which the application is made are that the plaintiff has refused to pay the correct and due court fees; that the purported payment of court fees is a gross underpayment; that there is no valid assessment of the court fees; that the plaintiff has refused and persists in the refusal to take advantage of **Section 96 of the Civil Procedure Act**; and that the plaintiff is in breach of **Section 1A, AB and 3A of the Civil Procedure Act** and is obstructing the realization of the objectives of those Section in this case.

2. The applicant states that the plaintiff is in abuse of the court process. No submissions were filed on behalf of the parties despite leave being granted to them to do so on 4/4/2017.

3. However, I have perused the plaint filed on 5/5/2017. I do note that there are no pecuniary damages claimed. The suit is for a declaration and an order of eviction. The prayers have nothing to do with the value of the land. I have looked at the High Court of Kenya Registry Operation Manual. One category of court fees applicable in this dispute is the court filing fees on pleadings generally (C.F.F) and this is referred to at paragraph 3.13 of the Manual. The Manual states that court fees are payable in filing all cases except criminal matters. The Manual states that no court fees shall be deliberately under-assessed or over-assessed. All court fees shall be verified by authorized court fees assessors.

4. Section 10 of the Judicature Act provides that the Chief Justice may make rules of court for regulating the practice and procedure of the High Court and the power to make rules under that section shall include the power to prescribe fees and scales of remuneration.

5. Court fees are a source of Government Revenue. The fees are provided for in respect of both monetary claims and non monetary claims. The High Court of Kenya Registry Operation Manual provides at paragraph 3.1.2.1 (Assessment and Calculation of Court Fees) as follows:-

“The fees payable for non liquidated claims (non-monetary claims) is Kshs.1,500/= per prayer in the claim”.

6. In the same Manual it is also stipulated as follows:-

“The fees payable for monetary claims from Kshs. 1-6,000/= are specifically tabulated in the court fees guide. However any court fees in excess of Kshs.5,000/= is assessed by subtracting

Kshs.5,000/= from the amount claimed and then multiplying the balance by 5% and adding that value to Kshs.730/= which is the fees payable on the Kshs.5,000/= initially subtracted from the amount claimed. The Manual also states that certain types of claims/services attract the same amount of court fees”.

7. Under Table 1 at page 18 of the Manual, “Civil, Commercial Land Monetary claims from **Kshs.1,390,000/=** attract a maximum of **Kshs.70,000/=** as court filing fees. On the same page, it is clearly stated that non-monetary claims, declaration, injunctions, civil appeals, habeas corpus, anticipatory bail and originating summons all attract a fees of **Kshs.1,500/=**. This is chargeable in respect of each prayer. Besides this, there would of course be the filing fee in respect of the documents filed alongside the plaint.

8. I have looked at the receipt issued on 5/5/2016 in respect of the documents and claims filed in this matter. The claim has been assessed at **Kshs.3,000/=**. This is correct because, one, the prayers are non monetary in nature and two, the main prayers are two, with each prayer assessed for **Kshs.1,500/=**.The summons are charged **Kshs.600/=**. Other miscellaneous charges amount to **Kshs.225/=**. The total sum is **Kshs.3,825/=**.

9. The defendant’s counsel has made an assumption that the levying of fees should be based on a valuation of the property in question regardless of whether the prayers in the claim are monetary or non-monetary. He stated as follows: at paragraph 13 of the affidavit in support of the application:-

“That the value of the property in dispute is to say the least over Kshs.15,000,000/=.”

10. And at paragraph 14 of the same affidavit it is stated as follows:-

“That the plaintiff paid only a sum of Kshs.3,000/= on the claim”.

At paragraph 16, the deponent further states:-

“That on the face of the plaintiff’s pleading and subsequent papers the court fees on the claim should have been Kshs.75,000/=. On this basis it is urged that the suit is not properly before the court”.

11. I have already analysed above the methods used to assess court fees. It is clear that the defendant’s counsel is mistaken on this point. I find no under-assessment in respect of the fees paid in respect of this claim. Assessment of fees is not purely based on value in all cases as in the Advocates Remuneration Order. There is a distinction between the methods provided for assessing court fees and that of assessing advocates fees.

12. The upshot of the foregoing is that application dated 28/3/2017 has no merit and it is hereby dismissed. The same was a needless application so that costs thereof will be borne by the defendants.

Signed, dated and delivered at Kitale on this **11th** day of **July, 2017**.

MWANGI NJOROGE

JUDGE

Ruling read in open court in the presence of:-

N/A for the Applicant

Mr. Wanyama for the Respondents

MWANGI NJOROGE

JUDGE

11/7/2017