



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT KERICHO

CIVIL SUIT NO.4 OF 2012

DANIEL CHEPKWONY BII.....PLAINTIFF

VERSUS

PHILIP LANGAT & 5 OTHERS.....DEFENDANTS

RULING

(Application to strike out suit as being an abuse of the process of court; suit res judicata and plaintiff not having a proper title; application allowed; suit struck out with costs)

The application before me is that dated 13th February 2012. It is brought pursuant to the provisions of Order 2 Rule 15 of the Civil Procedure Rules, 2010, and it seeks orders that the plaint herein be struck out with costs. The grounds upon which the application is based are as follows :-

- (a) That the suit herein is an abuse of the process of court.*
- (b) That the plaintiff has instituted Kericho HCCC No. 94 of 2009 over the same cause of action and which suit is still pending.*
- (c) That the plaintiff's suit is res judicata in view of the judgment and decree issued in the High Court at Nakuru in HCCC No. 239 of 1994 whereby the plaintiff's father's claim against the defendant's father was dismissed with costs.*
- (d) That the purported title document held by the plaintiff is non-existent since the grant of letters of administration in respect of his father's estate, and upon which basis the same had been issued, was revoked and the entry relating to subdivision of the original parcel No. Kericho/Kipsonoi S.S/267 reversed.*
- (e) That the plaintiff's claim is statutory time barred the defendants having been in occupation of the suit land as confirmed in the judgment in Nakuru HCCC No. 267 of 1994.*
- (f) The plaintiff's suit is only meant to vex and annoy the defendants as the plaintiff had previously filed Nakuru CMCC No. 594 of 2007 over the same cause of action and which suit was equally struck out with costs to the defendants.*

The application is supported by the affidavit of David Langat, the 3rd defendant. Despite being given an opportunity to respond to the application, no replying affidavit nor grounds of opposition were filed by the plaintiff.

The application herein seeks the striking out of the plaint and I think it is important that I set out the pleadings in this suit.

This suit was commenced by way of plaint filed on 1st February 2012. In the plaint, it is pleaded that the plaintiff is the registered owner of the land parcel Kericho/Kipsonoi Settlement Scheme/728 measuring approximately 11.87 hectares as a first registration issued on 10th April 2006. It is pleaded that the land originally belonged to the plaintiff's deceased father, one Kipruto arap Chepkulei (deceased), who bought the land from Kipsonoi Settlement Scheme and bequeathed the same to the plaintiff. It is pleaded that the defendants forcefully trespassed onto the plaintiff's land a long time ago and have had several land cases with the plaintiff's deceased father but are still wrongfully on the land. It is averred that the defendants have illegally trespassed onto the land and forcefully subdivided part of the land amongst themselves and are building temporary structures on the land, farming and keeping animals. Due to this, it is pleaded that the plaintiff is unable to properly utilize his land. It is averred that there is no suit pending between the parties concerning the same subject matter. In the suit, the plaintiff has asked for orders of eviction against the defendants from the claimed land, costs and interests.

The defendants entered appearance and filed defence. In the defence, they pleaded that the property Kericho/Kipsonoi S.S/728 is a subdivision of the land parcel Kericho/Kipsonoi S.S/267 which was previously owned by the plaintiff's deceased father, one Kipruto arap Chepkulai. When he died, the plaintiff commenced a succession cause. The estate of the deceased was distributed and the plaintiff obtained a portion of the property which now became registered as the parcel No. 728. It is pleaded that in the succession cause, the plaintiff never disclosed the interests of the defendants. It is averred that the father of the defendants, Kiplangat arap Mitei (deceased), had in the year 1965, purchased a portion of the land from the plaintiff's father and he took possession. In the year 1994, the plaintiff's father, sued the defendants' father seeking his eviction in Nakuru HCCC No. 239 of 1994. This case failed as it was held that it had been filed after the lapse of 12 years. It is pleaded that when the defendants came to learn that a succession cause had been filed by the plaintiff, they successfully applied for its revocation which was done on 21st October 2004. It is averred that if the plaintiff obtained title to the land parcel No. 728, then this was done by way of fraud since the grant was revoked. The defendants also pleaded that there have been various other suits, being Nakuru CMCC No. 594 of 2007 which was struck out and Kericho HCCC No. 94 of 2006 which is pending.

In the supporting affidavit to this application, the deponent has more or less repeated the averments pleaded in the defence.

I have looked at all the material before me. I have seen that in Nakuru HCCC No. 239 of 1994, the plaintiff's father sued the defendants' father so that he may be evicted from the land parcel No. 267. The defendants' father died on 4th May 1995 and was substituted by the 3rd defendant. The suit was dismissed through a judgment delivered on 23rd May 1997. No appeal was filed against this judgment.

Later, the plaintiff's father died, and the plaintiff filed Nakuru High Court, Succession Cause No. 361 of 2001. Through the said cause, the land parcel No. 267 was distributed to several persons, one of whom was the plaintiff, who received 29.5 acres. The defendants however successfully applied for its revocation which was allowed in a ruling by Musinga J (as he then was) delivered on 21st October 2004. In the ruling, the learned judge held that the parcel No. 267 did not form part of the estate of the plaintiff's deceased father, as he had lost in the suit against the defendant's father. Despite this ruling, the plaintiff somehow still managed to subdivide the land parcel No. 267, following what was in the Confirmed Grant that was later revoked, and got title to the land parcel No. 728.

Believing that he has good title to the land parcel No. 728, the plaintiff sued the defendants in the High Court at Kericho, vide the case Kericho HCCC No. 94 of 2006. I have looked at the plaint of this case, and it is against the same defendants in this suit. The orders sought are a mandatory injunction to restrain the defendants from the land parcel No. 728. The plaintiff also filed another case in the Chief Magistrate's Court at Nakuru, being the case Nakuru CMCC No. 594 of 2007. I have looked at the plaint of this suit, and the order sought is to have the defendants evicted from the parcel No. 728. Despite these two suits, the plaintiff has commenced this case seeking more or less similar orders to the previous suits.

I have no doubt in my mind that this suit is similar to the cases Kericho HCCC No. 94 of 2006 and Nakuru CMCC No. 594 of 2007, which were filed prior to this case. This suit is therefore res judicata to these two suits. It is also apparent to me that the plaintiff cannot purport to have title to the land parcel No. 728. This is because he obtained title by virtue of a Confirmed Grant which has been revoked.

Order 2 Rule 15 upon which this application is based is drawn as follows :-

15. Striking out pleadings [Order 2, rule 15.]

(1) 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; or

(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.

It will be seen from the above that where pleadings are an abuse of the process of court, they may be struck out. It is clearly an abuse of the process of court for one to file a suit where he has pending suits over the same cause of action. This offends Sections 6 and 7 of the Civil Procedure Act, CAP 21, Laws of Kenya, which embody the principle of res judicata. I do not also see how the plaintiff can be trying to enforce rights over the parcel No. 728, whose basis is a Confirmed Grant that has been revoked. The case herein is clearly an abuse of the process of court. This application must succeed and the plaintiff's suit is hereby struck out with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In the presence of;

1. Mr. J.M. Motanya holding brief for M/s Kiplenge & Kurgat Advocates for the defendants/applicants.
2. No appearance on part of M/s Ochieng Gai & Co. Advocates for plaintiff/respondent.