



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

E&L CASE NO. 291 OF 2013

JOHN MEEME NGEERA.....PLAINTIFF/APPLICANT

VERSUS

JOSEPH MWITHALI MUCHIRI.....1ST DEFENDANT/RESPONDENT

PETER MUTURA KABERIA.....2ND DEFENDANT/RESPONDENT

JANET NKATHA MURURU.....3RD DEFENDANT/RESPONDENT

AMINA SHEIKH ABDULKADIR.....4TH DEFENDANT/RESPONDENT

KHAALIF SHEIKH MOHAMMED5TH DEFENDANT/RESPONDENT

CHRISTOPHER KIMATHI M'MWERERIA.....6TH DEFENDANT/RESPONDENT

RULING

This ruling concerns a Notice of Preliminary Objection on a Point of Law dated 23rd May, 2014 and filed by the defendants.

The Preliminary Objection states:-

“**TAKE NOTICE** that when the Plaintiff's suit and/or application comes for hearing on 29th May, 2014 or at any other given time, the Defendant's Counsel shall raise a Preliminary Objection on points of Law with a view of having the plaintiff's suit and/or application be struck out on grounds that:-

1. ***THAT the Plaintiff's suit and/or application offend Section 29(1)(a&b) and Section 30(1) of the Land Adjudication Act CAP 284 Laws of Kenya.***
2. ***THAT the plaintiff's suit is fatally defective and an abuse of the Court process.***
3. ***THAT the purported Consent dated 23rd May, 2013 applied in filing this instant suit is defective in its form and nature, hence, an abuse of the Court Process.***

Parties elected to have the Preliminary Objection canvassed by way of Written Submission. However, despite having been indulged with several chances to do so, the defendants did not file Written

Submissions.

In his short Submissions the plaintiff submitted that this Preliminary Objection was not based on pure points of law as its grounds would invite arguments which could only be ascertained through tendering of evidence. He proffered the case of MUKISA BISCUITS CO LTD *Versus* WEST END DISTRIBUTORS [1969] EA 696. Regarding his assertion that the suit was properly in Court, proffered the case of METHODIST CHURCH OF KENYA REGISTERED TRUSTEES *Versus* HON. MITHIKA LINTURI & OTHERS , HCCC NO 37 OF 2010 AT MERU.

I do agree with the plaintiff that the Preliminary Objection does not raise pure points of law. On ground 1 , it would be necessary to prove how the suit offends Sections 29(1) (a&b) and Section 30(1) of the Land Adjudication Act. In ground 2, the broad claim that the suit is fatally defective and an abuse of the Court process veritably invites arguments . Ground 3 that the Consent dated 23rd May, 2013 is defective in its form and nature and is an abuse of the Court process is nebulous and invites arguments.

For the above reasons **I find that the Preliminary Objection is not meritorious . I dismiss it.**

Costs shall be in the cause.

It is so ordered.

Delivered in open Court at Meru this **12th day of April, 2016** in the presence of:-

Daniel /Lilian

Manases Kariuki for Plaintiff

Defendants or their Advocates Absent.

P.M. NJOROGE

JUDGE