



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT

AT NAIROBI

HCCC NO. 1159 OF 2000

MICHAEL KAMAU & OTHERS.....PLAINTIFF

VERSUS

LUKAS KIMEU MUTEVU & 31 OTHERS.....DEFENDANTS

RULING

**The Application**

The Defendants herein filed an application by way of an Amended Notice of Motion dated 11<sup>th</sup> December 2013, seeking orders that the Plaintiff's Amended Plaint dated 25<sup>th</sup> August 2000 be struck out for being incompetent as the same does not disclose any reasonable cause of action, is frivolous, vexatious and otherwise an abuse of the process of court. The Defendants further prayed that judgment be entered in their favour on the Counterclaim and that costs be provided for.

The main grounds for the application are that the Defendants should be registered proprietors of Land Parcel MAKUYU/KAMBITI/BLOCK 1/1-54, 61 & 62 (hereinafter referred to as "the suit properties") within the meaning of section 38 of the Limitation of Actions Act, and that the Plaintiffs who brought this suit on behalf of others did not seek the Court's leave before filing a representative suit. Further, that the Plaintiffs' claim does not specify which parcels of land are occupied by the Defendants thus the entire Plaint herein is incurably defective.

The 1<sup>st</sup> Defendant in a supporting affidavit and further affidavit sworn on 11<sup>th</sup> December 2013 and 4<sup>th</sup> December 2014 respectively explained that he is the Chairman of Muthanga Farm situated on the suit properties, and on which over 1000 settlers have been cultivating since the year 1964. Further, that the Defendants who reside on the land were not notified of the charges in the title and that that the Plaintiffs' suit is *mala fide* and an attempt to disregard the accrued interests of the Defendants in the suit properties arising out of adverse possession.

The deponent reiterated that the Plaintiffs instituted a representative suit against the Defendants for alleged trespass on the said suit land, and that the said representative suit was instituted without seeking leave of this Court thus the same is incompetent, defective and its continued prosecution is an abuse of the process of the Court. He also denied that the Plaintiffs are *bona fide* owners of the suit properties, as they obtained their titles fraudulently and are reluctant to set this case down for hearing.

**The Response**

The Plaintiffs opposed the said application in a replying affidavit sworn by the 1<sup>st</sup> Plaintiff on 7<sup>th</sup> November 2014, wherein he stated that the Plaintiffs are the *bona fide* registered owners of the suit properties which has been invaded by the Defendants without any lawful cause of excuse. Further, that the fact that the said Defendants have unlawfully occupied the said parcels of land is a reasonable cause of action which should be adjudicated by the court.

The deponent also averred that the only way the Court can come to a determination on whether the suit herein has merit is by awarding the parties a chance to be heard and present their evidence, and that the Plaintiffs' suit or pleadings can be cured by way of amendment and it is therefore misleading to allege that the same is incurably defective.

**The Issues and Determination.**

The parties were directed to file written submissions on the Defendants' application. The Defendants' counsel filed submissions dated 13<sup>th</sup> October 2014, while the Plaintiffs' counsel filed submissions dated 27<sup>th</sup> November 2014. Both counsel reiterated the

arguments made in the pleadings filed by the parties, and cited various judicial authorities in support of their respective cases.

Dated, signed and delivered in open court at Nairobi this \_\_\_18<sup>th</sup>\_\_\_ day of \_\_\_February\_\_\_, 2015.

**P. NYAMWEYA**

**JUDGE**