



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 628 OF 2013**

**JEREMIAH MUGWE NJOROGE.....PLAINTIFF**

**VERSUS**

**ROSE MUGURE KAMAU..... DEFENDANT**

**RULING**

**The Application**

The application before the Court for determination is a Notice of Motion filed by the Plaintiff dated 28<sup>th</sup> November 2013 seeking the following orders:

1. That the Statement of Defence filed herein by the Defendant on the 3<sup>rd</sup> July 2013 be struck out for not disclosing any reasonable Defence in Law.
2. That judgment be entered for the Plaintiff as prayed in the Plaintiff.
3. That cost of this Application and the main suit be borne by the Defendant.

The grounds for the application are that the Plaintiff's claim against the Defendant concerns LR. NO. LIMURU/BIBIRIONI/4232, while the Defendant's statement of Defence relates to L.R No. LIMURU/BIBIRIONI/1572 which title does not exist. Further, that ELC NO. 628 of 2013 and ELC No. 523 (O.S) of 2013 are two different suits and LR NO. LIMURU/BIBIRION/1572 and L.R No. LIMURU/BIBIRION/4232 are separate parcels of land. Lastly, that ELC No. 523 (O.S) of 2013 concerns L.R NO. LIMURU/BIBIRIONI/1572 which does not belong to the Plaintiff.

The Plaintiff's Advocate filed written submissions dated 17<sup>th</sup> October 2014 wherein it was argued that the Plaintiff in his plaint dated 27<sup>th</sup> May 2013 and filed in Court on the 28<sup>th</sup> May, 2013 prays for an order to evict the Defendant from L.R NO. LIMURU/BIBIRIONI/4232, which is registered in the name of the Plaintiff. He also prays for costs of the suit.

Further, that the Defendant entered appearance to the suit on the 3<sup>rd</sup> July 2013 and filed a Statement of Defence on the same date. The Plaintiff submitted that the Defendant in the said Defence states that she is not a trespasser on L.R No. LIMURU/BIBIRIONI/1572. The Plaintiff submits that his application therefore ought to be allowed for the reason that the suit before this Court concerns LR. NO. LIMURU/BIBIRIONI/4232 and not LR. NO. LIMURU/BIBIRIONI/1572.

The Plaintiff also contended that the Defendant has not availed to this Court pleadings and/or proceedings relating to ELC No. 523 (O.S) of 2013 and a copy of the alleged judgment she obtained therein to enable this Honourable Court know who were the Parties thereto and whether L.R NO. LIMURU/BIBIRIONI/1572 exists and is registered in the name of the Plaintiff.

Lastly, it was submitted that though the Notice of Motion dated 28<sup>th</sup> November, 2013 was served upon the Advocates for the Defendant on the 24<sup>th</sup> January 2014, no reply to the application has to date been filed or any effort made to amend the Defence.

The Defendant did not file any response to, and/or submissions on the Plaintiffs application.

### **The Issues and Determination.**

I have carefully considered the pleadings filed herein, and submissions made by the Plaintiff. The issues for determination are whether the Defence filed herein by the Defendant should be struck out on account that it discloses no reasonable cause of action, and if so whether judgment should be entered in favour of the Plaintiff.

The Notice of Motion by the Plaintiff is brought pursuant to the provisions of Order 2 Rule 15 (1) of the Civil Procedure Rule, which provides as follows:

**“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 is settled law that the power of the Court to strike out pleadings should be used sparingly and cautiously, as it is exercised without the court being fully informed on the merits of the case through discovery and oral evidence. This was stated In D.T. Dobie & Company (Kenya) Ltd. v. Muchina [1982] KLR 1 at p. 9 by Madan, J.A.as follows:-

**“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”**

The overriding principle to be considered in an application for striking out of a pleading is whether it raises any triable issues. In the present suit, the Defendant’s Statement of Defence dated 24<sup>th</sup> June 2013 and filed on 3<sup>rd</sup> July 2013 makes a claim with respect to the property known as LIMURU/BIBIRIONI/ 1572, and not the suit property which is LIMURU/BIBIRIONI/ 4232. The relationship between the two properties is also not pleaded by the Defendant. The said Defence cannot therefore answer to, and is incapable of disclosing any reasonable cause of action with respect to the claims made by the Plaintiff in his Plaint as regards land parcel LIMURU/BIBIRIONI/ 4232. The said Defence is therefore liable to be struck out.

As regards whether judgment should consequently be entered in favour of the Plaintiff, I note that the Plaintiff has not attached the copies of his title to L.R NO. LIMURU/BIBIRIONI/ 4232 and certificate of official search with respect to the said property that are indicated in his list of documents dated 27<sup>th</sup> May 2013 and filed in Court on 28<sup>th</sup> May 2013. Since the Plaintiff’s ownership of the said property has not been established, this suit shall proceed to hearing for formal proof pursuant to the provisions of Order 10 Rules 9 and 10 of the Civil Procedure Rules.

The Plaintiff's Notice of Motion dated 28<sup>th</sup> November 2013 is accordingly allowed only to the extent of the following orders:

1. The Statement of Defence filed herein by the Defendant on 3<sup>rd</sup> July 2013 be and is hereby struck out for not disclosing any reasonable defence.
2. The Plaintiff shall forthwith set this suit for hearing for purposes of formal proof.
3. The cost of Plaintiff's Notice of Motion dated 28<sup>th</sup> November 2013 shall be in the cause.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this 9<sup>th</sup> day of February , 2015.

**P. NYAMWEYA**

**JUDGE**