



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. CASE NO. 387 OF 2014

FLORINE KARIMI MATI.....1ST PLAINTIFF
MARY KANYUA MATI.....2ND PLAINTIFF
AGNES WANJIRU KIIRU.....3RD PLAINTIFF
ISABELLA MARIGU OMONDI.....4TH PLAINTIFF
JOY PAMELA KAGURI.....5TH PLAINTIFF
DAVID KARIUKI MBUGUA.....6TH PLAINTIFF

VERSUS

ILULUWE DEVELOPMENT LIMITED.....1ST DEFENDANT
LIBERTY HOMES LIMITED.....2ND DEFENDANT

RULING

In an application dated 26th May 2014, the Plaintiffs sought to have the 1st Defendant's defence struck out and summary judgment entered in their favour for the reasons that the defence filed did not raise any triable issue.

The 1st defendant then filed a Notice of Preliminary objection dated 27th June 2014 on the grounds that:-

1. This court does not have jurisdiction to entertain this suit.
2. This suit was premature and meant to waste court's time.
3. The suit is totally defective in procedure and law and the same should be dismissed with costs.
4. No application of this nature can lie from an incompetent suit.

The court ruled that the 1st Defendant's Notice of Preliminary Objection dated 27th June 2014 would be heard and determined before the Plaintiff's Notice of Motion dated 26th May 2014. That

Preliminary Objection is the subject of this ruling.

Parties canvassed this Preliminary Objection by way of written submissions. The 1st Defendant did not make any submissions on jurisdiction. However, the 2nd Defendant submitted that the Plaintiffs' Application as filed was fatally defective as it contravenes the mandatory provisions of Order 2 Rule 15 (2), Order 36 Rules 1 and 2 of the Civil Procedure Rules, that the Application ought not to have combined Rule 1(15) (a) and Rule 2 (15) (b) of the Civil Procedure Rules and that the 1st Defendant had filed a statement of defence with bona fide triable issues.

In reply, the Plaintiffs submitted that section 13 (2) of the Environment and Land Court Act, 2011 gives power to this court to hear and determine issues relating to the public, private and community land and contracts, Section 13 (2) further granted the court the power to hear any other dispute relating to Environment and Land and section 14(7) allowed the court to make further orders such as award of damages, compensation, restitution and costs. They further argued that section 19(2) of the same statute provided that the court shall not be bound by the procedure laid down by the Civil Procedure Act and shall be guided by the principles of natural justice.

A preliminary objection is purely on a point of law as was stated in the case of **Mukisa Biscuit Manufacturing Co Ltd –vs- West End Distributors (1969) EA 696** .The court held that

“...a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration....a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

One of the issues raised in the preliminary objection for determination is whether this Court has jurisdiction to hear and determine this suit bearing in mind that the dispute relates to land where there is a claim for breach of sale of land. The question of a court's jurisdiction or otherwise is the beginning and the end of any matter as stated by Nyarangi JA (as he then was) in **The Owners of Motor Vessel “Lillian S” versus Caltex Oil Kenya Limited (1989) KLR** where he stated that,

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

*Even though the 1st Defendant raised his preliminary objection on the jurisdiction of this court, he did not make any submissions to canvass his reasons as to why this court lacked jurisdiction in handling this case. The Plaintiffs in their submissions stated that this court had the jurisdiction to deal with this case and relied on the highlighted sections of the **Environment and Land Act, 2011 and Article 162 (2)(b), and 165 of the Constitution. Section 13 (2) (d) of the Act provides for the hearing and determination on disputes on private land and contracts while section 13(2)(e) provides for the hearing and determination of disputes on land generally. Section 13(7) provides for the reliefs given by the court which include: interim or permanent preservation orders including injunctions, prerogative orders, award of damages, compensation, specific performance, restitution, declaration and costs. In their case, the Plaintiffs have made a claim of a breach of sale agreement against the Defendants and the reliefs they have sought are damages, interest and costs of the suit which fall within the purview of this court. It is therefore my opinion that the preliminary objection raised on the ground of lack of jurisdiction has no merit and should not be allowed.***

The 2nd, 3rd and 4th points raised by the 1st Defendant on the competence of the Plaintiffs' pleadings are matters that need to be raised in an application and cannot be determined by way of preliminary

objection as the 1st Defendant will need to adduce evidence to support his claim that the suit is premature and that the procedure used by the Plaintiffs in filing their pleadings is improper.

In the circumstances, the 1st Defendants Preliminary Objection dated 27th June 2014 is hereby dismissed with costs to the Plaintiffs.

DELIVERED AND SIGNED IN NAIROBI THIS 17TH

DAY OF JULY 2015.

MARY M. GITUMBI

JUDGE