

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ENVIRONMENT AND LAND MISC. APP. NO. 20 OF 2015

AMANA PETROLEUM (K) LTD.....APPLICANT

-VERSUS-

1. ENOS BUKO AYUB.....1ST RESPONDENT

2. KENANI KOMORA BUKO.....2ND RESPONDENT

RULING

1. The respondents herein have filed a preliminary objection dated 15th June 2015 seeking the Court to make an order that there is no suit property before

Court upon which orders can be granted. The parties relied on the pleadings as filed. What is presented to this Court is a miscellaneous application

accompanied with a supporting affidavit.

2. Under Section 2 of the Civil Procedure Act, pleadings is defined to include **“a petition or summons and the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of plaintiff to any defence or counter-claim of a defendant”**.

Further Section 19 of the CPA provides that every suit shall be instituted in such a manner as may be prescribed by the rules. Order 3 of the Civil Procedure Rules require every suit to be commenced by presenting a plaint or in such manner as is prescribed. Such other manner is either by an originating summons under order 37 or a constitutional petition. The present suit has not been instituted in either of the stated form.

3. The applicant sought 5 prayers of which prayer 1 and 2 was already dispensed with. Prayer 3 sought extension of interim orders issued herein until hearing and final determination in suit No ELC 47 of 2015. Prayer 4 asks the Court to determine the ownership of Land Parcel No Mgumo Patsa/Mazeras 456 and declare the respondents as trespassers. While prayer 5 asked the Court to issue an order proscribing any form of trespass until further orders from this Court or until hearing and determination of ELC No 47 of 2015. I have considered the reasons given in support of the motion. Besides documents proving ownership of the Plot annexed by the applicant, no pleadings in ELC 47 of 2015 was annexed. I have also read through the affidavit in support and I did not come across any explanation why this application was not made with the file No ELC No 47 of 2015.
4. In the body of the supporting affidavit, the applicant discloses that he is a respondent in ELC No 47 of 2015. The applicant goes further to accuse the respondents of giving false information under oath as contained in paragraph 15. From the affidavit of the applicant it seems the parties herein are the parties in ELC 47 of 2015. The orders sought herein are to remain in force until the hearing and final determination of ELC 47 of 2015. Prayer 4 of the motion seeks final orders which can only be granted after adduction of evidence. As it is, there is no proper suit before this Court in this file where such evidence can be presented. The applicant was ably represented by legal Counsel and cannot invoke the provisions of article 159 of the Constitution to by pass the

provisions of the Civil Procedure Act and Rules.

5. Therefore going by the provisions of the Civil Procedure Act and Rules as regards institution of suits and by the fact that there is already a suit before this Court regarding same parties and same subject matter, I find the preliminary objection as merited and I uphold it. This miscellaneous application is hereby struck out with costs to the respondents.

Ruling dated and delivered at Mombasa this **29th** day of **September, 2015**

A. OMOLLO

JUDGE