

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ENVIRONMENT AND LAND CASE NO. 203 OF 2012

HAMADI BAKARI BOMBO.....PLAINTIFF/APPLICANT

-VERSUS-

JUMA KITUMBO & OTHERS.....DEFENDANTS/RESPONDENTS

RULING

1. The A.G has raised a Preliminary Objection against the plaintiff pursuant to the Order 1 rule 20(2) and 25 of the Civil Procedure Rules. The objection is to the effect of having the 2nd defendant's name struck off from the suit. Mr Ngari state counsel submits that the amended plaint mentions the 2nd defendant's name only in paragraph 14 and prayer (b) & which paragraphs do not disclose any cause of action against the 2nd defendant. He cited the case of **Knec vs**

Republic Ex parte Geoffrey Njoroge & 9 others (1997) eKLR.

2. The objection is opposed by Mr Gekonde Counsel for the plaintiff who submitted that the objection is mischievous. Mr Gekonde submitted that the plaintiff attempted to present his documents to the 2nd defendant for registration and the cause of action is set out in paragraph 3 and 14 of the plaint. The Counsel cited Order 1 rule 3 and 5 in support of his submissions and stated that the 2nd defendant can be compensated by way of payment of costs. He urged the Court to dismiss the preliminary objection.

3. I have considered the submissions rendered and the provisions of the law cited.

In the amended plaint paragraphs quoted reads;

3. The 2nd defendant is a civil servant in the government and is sued pursuant to the provisions of section V of the government Lands Act save for the purpose of this suit.

14. The plaintiff avers that the Court directs the 2nd defendant to effect the changes on the mother Title No Kwale/Mwananyamara/321 Prayer (b) : A mandatory Order be issued directing the 2nd defendant to issue separate titles in the name of the plaintiff for the portion of land occupied by him as per the mother title No Kwale/ Mwananyamara/321

4. From these paragraphs, paragraph 3 is merely descriptive. In paragraph 14 and prayer (b) the plaintiff is asking the Court to direct the 2nd defendant to act.

However the pleadings as filed, there is no paragraph specifying the fault or negligence on the part of the 2nd defendant to act as requested by the plaintiff.

This Court is unable to find any cause of action raised by the present pleadings and the law is parties are bound by their pleadings. In any event, no prejudice will be occasioned to the plaintiff if the objection is allowed. I find the preliminary objection as merited and allow it. The 2nd defendant's name is hereby struck from this suit.

Ruling Dated and Delivered at Mombasa this 18th day of September, 2015

A. OMOLLO

JUDGE