



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 891 OF 2012

Formerly HCC 133 of 2012

SAMWEL NDURA KANYARA.....PLAINTIFF

VS

MARY NJAMBI KARIUKI & ANOTHER.....DEFENDANTS

(Application to strike out plaint as disclosing no cause of action; principles to be applied to an application of this nature; plaint as drawn being muddled; not fair to have any defendant defend such pleadings; suit struck out with costs)

RULING

Before me is an application brought under the provisions of Order 2 Rule 15 of the Civil Procedure Rules, 2010. It is an application filed by the Attorney General, the 2nd defendant, seeking to have this suit struck out with costs for the reason that the suit does not disclose a reasonable cause of action. The grounds upon which the application is based are :-

1. *That the suit filed does not disclose a cause of action against the 2nd defendant.*
2. *That the 2nd defendant is a stranger to the claims made in the plaint by the plaintiff/respondent.*
3. *That the 2nd defendant is unable to respond adequately as the plaintiff's claim seems to be misplaced.*
4. *That the 2nd defendant appears not to be proper parties (sic) to the claim against Mary Njambi Kariuki, who is the 1st defendant.*

There is no affidavit supporting the application which is perfectly in order, as Order 2 Rule 15 provides as follows :-

15. (1) *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.

(2) No evidence shall be admissible on an application under subrule (1)(a) but the application shall state concisely the grounds on which it is made.

(3) So far as applicable this r. shall apply to an originating summons and a petition.

It can be seen from the above that an affidavit is not necessary when the application seeks to strike out the plaint because it discloses no reasonable cause of action.

The task of the court when faced with an application brought pursuant to the provisions of Order 15 Rule 1(a) is to determine whether there is a reasonable cause of action. It is also trite that a court ought to exercise the utmost caution before striking out a suit summarily, for the reason that it does not disclose a reasonable cause of action. Indeed, if the court is of the view that an amendment will cure the plaint as filed, then the court ought not to strike out the suit but give an avenue for amendment so that the plaintiff may be allowed to ventilate his case.

The leading authority in our jurisprudence must be the case of ***DT Dobie & Co vs Muchina (1982) KLR 1***. In the said case it was stated that :-

“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.”

So, does this suit disclose a cause of action as claimed by the 2nd defendant ?

This suit was commenced by way of plaint filed in person and for full effect, I will set out the plaint as drawn by the plaintiff.

1. The plaintiff is a male individual of sound mind working for gain in Eldoret and his address for service for the purposes of this suit is P.O. Box 2043 Eldoret.

2. The first defendant Mary Njambi Kariuki of West Tangore Road west Indies Eldoret and care of Post Office Box No 411-30100 Eldoret.

3. The second defendant address for service shall be care of the Attorney general, attorney General chamber KVDA Plaza 9th floor Oloo street P.O. Box 4024 Eldoret, attorney General chamber Sheria House, P.O. Box 40112-00100 Nairobi.

4. Five different cases in one No. 144 of 1993 plaintiff paid their money kshs.300 for the memorandum of appeal no. 144 of 1993 dated stamped with the date on which it was so presented date for filing the appeal. Nguro Security guards services versus Coastal Kenya Enterprise, Charles Ochuonga Onyango versus Highland paper Mill, Samwel Ndura Kanyara versus Mary Njambi Kariuki and other two more cases are all to be five in one No. 144 of 1993 are to be heard for their hearing.

5. The memorandum of appeal no. 144 of 1993 was admitted to hearing by the Judge (Hon. Justice Aganyanya). After a period of years the plaintiff wrote a letter to the High Court at Eldoret to the Deputy Registrar the appeal was admitted to hearing by Judge (Hon. Justice Jane Gacheche). The appeal no.144 of 1993 was admitted to hearing by the two Judges in the High Court of Kenya at Eldoret BUT no file opened in the High Court at Eldoret for the admitted appeal to file notice of appeal and record of appeal to plaintiff/defendant.

6. *The agreement, the summon from the chief to the plaintiff, the chief letter to the advocate and District Officer, the chief and chief elder judgment, District Officer central division letter to the District Officer Turbo division, District Officer letter to the District Commissioner, Judgement, Scale map No 10 block 14 Kamukunji Eldoret town.*

7. *The Plaintiff will be supported by the witnesses annexed verifying affidavit of the correctness of the averment contained in the plaint.*

8. *An averment that there is no other suit pending and that there have been no previously proceedings in any court between the plaintiff and defendant over the same subject matter.*

Reasons where for the cause of this action arose within the jurisdiction of these honourable court. The plaintiff pray for the judgement against the defendant jointly and severally for:

a. *The defendant be ordered to give out a piece of land to plaintiff measuring $\frac{3}{4}$ land registration number 6177 block 14 Kamukunji within Eldoret Municipality and time lost.*

b. *Any other relief this honourable court deem fit to grant*

c. *Costs of the suit.*

Miss. B.J. Maina of the State Law Office for the 2nd defendant/applicant, submitted that a scrutiny of the plaint will show that it does not ask for any orders against the Attorney General. She asked that the suit be struck out as prayed.

Mr. C.K. Njuguna for the 1st defendant supported the application. He was of the view that the suit indeed does not disclose a cause of action against the defendants and that the same appeared to be a complaint against the court registry. He averred that the plaint is very vague.

The plaintiff did not file any response to the application. Nevertheless, I allowed him to make submissions to oppose the application. It was his view that paragraphs 4,5, and 6 of the plaint are claims against the Attorney General. He stated that the suit touches on both the Attorney General and the Judiciary. He averred that the Attorney General ought to answer why there were five different cases which were given one case file number. He argued that none of his cases were ever heard yet he paid money (presumably court filing fees) to the judiciary.

I have considered the application and the submissions of counsel. As I stated earlier, my task is to determine whether the plaint discloses a reasonable cause of action. I have read the plaint and frankly I do not see any cause of action disclosed, not only against the Attorney General, but also against the 2nd defendant. The core of the suit is no doubt in paragraphs 4, 5 and 6 of the plaint. From what I can see, the plaintiff is making a statement that he filed several cases. It is not clear what happened to these cases and what relationship they have with the prayer sought, which is for the defendant (presumably 1st defendant) to be ordered to give out $\frac{3}{4}$ (presumably, acres) out of the land parcel No. 6177 Block 14 Kamukunji and the time lost.

I really cannot tell the intention of the plaintiff in filing the suit. I do not know what he wants and why. There cannot be said to be disclosed a reasonable cause of action where it cannot be discerned what wrong the plaintiff has pleaded, which person has done that wrong, and what remedy the plaintiff desires, which of course must be connected to the alleged wrongs and the persons who have committed the said wrongs. I am afraid that the plaint as drawn is wholly unintelligible, whose intention cannot be discerned, and which in my view, cannot be cured by way of amendment. Although only the 2nd defendant filed a formal application to strike out the suit, I really do not see what purpose will be served if I am to allow the suit to proceed, as drawn, against the 1st defendant. The plaint will still remain indecipherable, garbled, and all jumbled up, even for the 2nd defendant. It would be wholly unfair to commit any defendant to defend such a muddled and confused pleading.

For the above reasons, I have little option but to strike out the suit as against both defendants with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF SEPTEMBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-

Plaintiff acting in person

Mr. C.K. Njuguna of M/s Njuguna & Co for the the 1st defendant.

Mr. J.M. Ngumbi of the state Law office for the 2nd defendant.