



**Catholic Diocese of Eldoret v Sum (Environment & Land Case
E004 of 2022) [2023] KEELC 269 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 269 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E004 OF 2022**

**EO OBAGA, J
JANUARY 26, 2023**

BETWEEN

CATHOLIC DIOCESE OF ELDORET PLAINTIFF

AND

VERONICA CHEPSAT SUM DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 6/5/2022 which seeks an order that the originating summons filed herein be struck out for failure to disclose a reasonable cause of action. The defendant also contends that the originating summons is scandalous, frivolous, vexatious and is an abuse of the process of court.
2. The grounds upon which the applicant contends that the originating summons does not disclose a reasonable cause of action are firstly that the respondent has averred that it has been in possession of the suit property for 25 years, yet the Applicant acquired her title on March 18, 2009. Secondly, that the Respondent was not a party to the sale agreement with her. Thirdly, that the Respondent has never been in possession of the suit property and lastly, that the Respondent is seeking the suit both on the basis of sale and adverse possession which concepts cannot co-exist.
3. The respondent opposed the applicant's application based on a replying affidavit sworn on May 30, 2022. The respondent contends that the originating summons raised triable issues as such cannot be struck out at interlocutory stage. The respondent states that what the applicant is raising can only be canvassed in a full trial.
4. On the issue of locus standi, the Respondent states that it is the entity which acts as trustee for all Catholic churches and as such it has *locus* to bring this suit. On the issue of the respondent having been in possession for over 25 years, the respondent states that even if time was to start running from when



the applicant became registered as owner of the suit property, still it has been in possession for over 12 years before this originating summons was filed.

5. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. I have also considered the submissions by the applicant. the respondent was given 7 days to put in their submissions from November 1, 2022 but they did not comply. The only issue for determination is whether the originating summons lacks a reasonable cause of action.
6. The submissions of the applicant are in such a way that they are submissions made after the case has been heard. The originating summons herein raises serious triable issues and cannot be by any stretch of imagination be frivolous as alleged by the applicant. Striking out of a pleading is a drastic action which can only be allowed in the clearest of cases. Some of the issues raised in the originating summons are whether the respondent has been in possession of the suit property and what is the nature of that occupation. The other issue is how the Respondent entered the suit property from the stand point of the sale agreement. These are issues which can only be interrogated in a full hearing. I therefore find no merit in the applicant's application which is dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 26TH DAY OF JANUARY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Gichana for Defendant/Applicant

Ms. Chesoo for Plaintiff/Respondent.

Court Assistant –Akidor

E. O. OBAGA

JUDGE

26TH JANUARY, 2023.

