



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC CASE NO. E159 OF 2020

HYUNG GYUN KIM.....PLAINTIFF

VERSUS

KIAMBU DANDORA FARMERS CO.LTD.....1ST DEFENDANT

NAIROBI METROPOLITAN SERVICES.....2ND DEFENDANT

NATIONAL POLICE SERVICE.....3RD DEFENDANT

NATIONAL LAND COMMISSION.....4TH DEFENDANT

CHIEF LAND REGISTRAR, NAIROBI.....5TH DEFENDANT

THE ATTORNEY GENERAL.....6TH DEFENDANT

RULING

1. The Plaintiff filed this suit against the Defendants seeking among other reliefs injunctive orders. The Plaintiff contemporaneously filed a Notice of Motion in which he sought injunctive orders restraining the Defendants from interfering with two properties namely LR No. 209/9457 and LR No.209/9460. Before the Applicant’s application could be heard, the 1st Defendant raised a preliminary objection against the application and the entire suit on grounds that there existed a similar suit between the Plaintiff and the 1st Defendant that is ELC 484 of 2015.

2. The Plaintiff opposed the preliminary objection arguing that the same does not raise a pure point of law and that the suit which is the subject of ELC 484 of 2015 is LR No. 11379/3 whereas the present suit relates to LR No. 209/9460 and LR No. 209/9457.

3. The parties were directed to file written submissions in respect of the preliminary objection. The 1st Defendant filed submissions dated 18th February 2021. The Plaintiff filed submissions dated 14th April 2021. I have gone through the submissions by the parties herein and the only issue for determination is whether the 1st Defendant has raised a pure point of law which if argued will dispose of the entire suit.

4. The preliminary objection appears to be predicated upon section 6 of the Civil Procedure Act which provides as follows: -

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in

issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed”.

5. The definition of a preliminary objection was well set out in the case of **Mukisa Biscuit Manufacturing Co.Ltd Vs West End Distributors (1969) EA 969** where the court held that 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.

6. The marginal notes under section 6 of the Civil Procedure Act refer to stay of suit. In the instant case, the 1st Defendant has not placed any material before the court to show that the suit in ELC 484 of 2015 relates to the same parties over same subject matter. Whereas this suit relates to LR No.209/9457 and LR No.209/9460, the Plaintiff has indicated that the subject matter in ELC 484 of 2015 is LR No. 11379 /3. This clearly calls for ascertainment of facts and therefore this preliminary objection does not raise a pure point of law which will dispose of this suit. I therefore find no merit in the preliminary objection which is hereby dismissed with costs to the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF MAY 2021.

E. O. OBAGA

JUDGE

In the Virtual presence of:-

Mr Macharia for Mr Omari for Plaintiff

M/s Ngugi for 1st Defendant

M/s Fatuma for 2nd, 3rd 5th and 6th Defendants

Court Assistant: Okumu

E. O. OBAGA

JUDGE



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