



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL SUIT NO. 63 OF 2005

PETER KIPKEMOI CHERUIYOT.....1ST PLAINTIFF

CHARLES ARAP MAIYWA.....2ND PLAINTIFF

CHERUIYOT ARAP CEHEPKWONY.....3RD PLAINTIFF

ESTHER CHELANGAT.....4TH PLAINTIFF

JONATHAN MIBEL.....5TH PLAINTIFF

CHEPCHILAT ARAP MAINA.....6TH PLAINTIFF

PHILIP RUGUT.....7TH PLAINTIFF

(Suing in a representative capacity)

VERSUS

JAMES FINLAY (K) LTD.....1ST DEFENDANT

COUNTY COUNCIL OF KIPSIGIS.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. The 1st Plaintiff, via his manmade Chamber Summons application dated the 22nd November 2019 which does not state the provisions under which it is brought and which is equally ambiguous, seems to complain that the suit herein against the 2nd Defendant has been revived by M/S Sigira Siele Advocate without instructions from the 2nd Defendant/Respondent herein, in a matter that had long been settled between the Plaintiffs and the said 2nd Defendant.
2. The Application was opposed through the Grounds of Opposition dated the 28th February 2020 to the effect that it was scandalous, vexatious and contained unsubstantiated allegations that were defamatory to Counsel for the 2nd Respondent.
3. That the Plaintiff's suit stood dismissed on 30th August 2014 in a Ruling delivered on 30th July 2014 and a decree confirming and dismissal of the suit was subsequently issued on the 12th February 2015. That the Court had on two occasions, in its rulings dated 30th July 2014 and 10th March 2018 pronounced itself as being functus officio and therefore the present application ought to be dismissed.
4. I have considered the said Application in light of the grounds of opposition herein. I have also considered the findings in the Ruling of the Court delivered on 30th July 2014 dismissing the Plaintiffs' suit and to which the Applicant neither appealed nor applied to review the decree therein. I also note that on the 25th January 2016 there were directions to the effect that the suit having been dismissed and parties having drawn their Bill of costs, there was nothing before the Court.
5. On the 27th January 2017 the 1st Plaintiff/Applicant was directed to file an Appeal against the decision of the Court to which he failed to do, but instead filed a Chamber Summons dated 28th March 2017 whose prayers were ambiguous but seemed to seek that the 2nd and 3rd Defendants be struck out from the suit. The said application was dismissed via a ruling of 28th September 2017 in which pursuant to the

Court giving a brief history of the matter in question, clearly stated that it could not re-open the matter. See **Peter Kipkemoi Cheruiyot & 6 Others vs James Finlay (K) Ltd & 2 others [2017] eKLR**. There was again neither an Appeal nor Review filed by the Applicant.

6. The dismissal of the application did not deter the 1st Plaintiff/Applicant herein who filed yet another Application dated 23rd November, 2017 in a third attempt to revive the suit where he sought to have the 1st Defendant herein declared *the only defendant and for costs of the Application*. The Court upon finding that the application was frivolous, vexatious, and a gross violation of the process of the Court, dismissed the said application and warned the Applicant to desist from filing any more applications failure to which he ran the risk of being declared a vexatious litigant. See **Peter Kipkemoi Cheruiyot & 6 Others vs James Finlay (K) Ltd & Another [2018] eKLR**

7. Despite this warning the Applicant herein has filed the preset application castigating Counsel for the 2nd Respondent to the effect that he was responsible for delay in the prosecution of Plaintiffs' suit.

8. I find that the Applicant's claim has no prospect of success, his motive is aimed solely at harassing the Defendants and is made without good or just cause thus being synonymous with what can be termed as an abuse of the process of the Court. However much as I would have liked to declare him *a vexatious litigant my hands are tied as* the statute which governs vexatious proceedings is *The Vexatious Proceedings Act Chapter 41 Laws of Kenya* which empowers the Court, by dint of *Section 2* thereof, to declare a person a vexatious litigant.

9. Such declaration would need to be made in an application filed at the instance of the Attorney General to which the Court would have to afford the person so sought to be declared vexatious an opportunity to be heard in those proceedings

10. In the end and having considered all factors herein, I find no merit in the application dated the 22nd November 2019 and proceed to dismiss it with costs to the 2nd Respondent. The Court still remains functus officio.

DATED AND DELIVERED AT KERICHO THIS 18TH DAY OF FEBRUARY 2021.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE