



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL SUIT NO. 3 OF 2014

PURITY KARABAI MABU (Suing as Legal representative of M'Nkaabu Mwereria
alias

NKABU MWERERIA (Deceased).....PLAINTIFF

VERSUS

LYMOND MIRITI.....DEFENDANT

R U L I N G

This ruling concerns two preliminary objections. The first one, filed by the Defendant, is dated 6th day of February, 2014 and has the following grounds:

1. *The court lacks jurisdiction hear and determine this suit.*
2. *The purported plaintiff lacks locus standi to file this suit.*
3. *The suit discloses no cause of action.*
4. *The suit discloses no substantive prayer.*

The second application is dated 4th March, 2014 and is unsigned except for the “drawn and filed by” portion. It has the following grounds:-

1. ***THAT the defendant's advocate does not hold a practising certificate for this year and did not hold any last year.***
2. ***THAT the defendant's advocates are comprised of a partnership of unqualified and or unlicensed persons and thus unfit to proffer any presentation in court.***

Regarding the 1st application, and having perused the submissions made by the respective parties, including the authorities proffered by the parties, including the case of **Mukhisa Biscuits Manufacturing Co. Ltd Versus West End Distributors Limited [1969] EA 697**, I find that the application does not raise pure points of law. The suit has a substantive prayer and the objection relating to this objection invites arguments and is not a pure point of law. I also find that the suit discloses a cause of action. In these two grounds only, I have demonstrated that the grounds of objection do not amount to raising pure points of law. As this suit relates to land, I find that this court has jurisdiction to handle it. I do not need to say anything more. The application merits dismissal.

Regarding the 2nd application, I note that its supporting affidavit in paragraph 2 states as follows:

“2 THAT I have contacted the Law society of Kenya and established that the advocates and which is apparently a partnership of KIRIMI MBOGO, KENETH MURIUKI and HOSEA MUTEMBEI who purports to represent the defendants herein are not licensed to practice

save for Mr. KENNETH MURIUKI. Annexed are Marked “KDI” is a
out from the LSK website.”

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Annexure “KDI” shows practising status was inactive in 2014, but active in 2009, 2010, 2011, 2012 and 2013. It also shows that Mutembei Hosea Peter was inactive in 2014 but was active in 2012 and 2013. the supporting affidavit by David Kirimi was sworn on 4th March, 2014 and filed on 5th March, 2014, fairly early in the year 2014.

Our system is the Common Law System. Unlike the Civil System Judicial officers in Common Land Jurisdictions do not actively participate in investigations. However, a status report from the LSK website proffered to the Court shows the practising status of Mbogo Peter Kirimi, Number P. 105/3624/98 to be active during the years 2009, 2010, 2011, 2012, 2013, 2014 and 2015. I do not need to go into any details regarding Baithambu as the law society website lists advocate Mbogo as a partner in the firm of Mbogo and Muriuki advocates. Advocate Baithambu is not listed as a partner.

The authorities proffered by the plaintiffs are eminently good law in proper circumstances. In the present circumstances, I find that Mr Mbogo had a practising certificate in the year 2014. Regarding the diametrically opposed positions, apparently provided by the LSK website, I give the benefit of doubt to the defendant's advocate. In the circumstances, I am inclined to dismiss the 2nd application.

The end result is that I dismiss both applications. Costs shall be in the cause.

It is so ordered.

Delivered in Open |Court at Meru this 17th day of June, 2015 in the presence of:-

Cc. Daniel/Lilian

Muthomi h/b Kirimi for plaintiff/Applicant

Kariuki h/b for Mbogo for Defendant/Respondent

P. M. NJOROGE

JUDGE