



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ISIOLO

ELC NO. 003 OF 2021

GUYO TUKU

(Suing as the Chairman of Tawaho

Youth Group).....1ST PLAINTIFF

HUSSEIN YAKUB (Treasurer –

Tawaho Youth Group).....2ND PLAINTIFF

GALMA DIMA (Secretary –

Tawaho Youth Group.....3RD PLAINTIFF

VERSUS

GODANA HALAKHE.....1ST DEFENDANT

HUSSEIN DUBA.....2ND DEFENDANT

MOLU BOBAYE.....3RD DEFENDANT

GALGALO DIKA.....4TH DEFENDANT

GALGALO GODANA.....5TH DEFENDANT

RULING

1. The defendants' Notice of Preliminary Objection states as follows:

DEFENDANTS' NOTICE OF PRELIMINARY OBJECTION (PO)

TAKE NOTICE that prior to the hearing of the main suit the Defendants will raise Preliminary Objections on points of law that:-

1. The Plaintiff offends order 4 Rule 1 (3) Civil Procedure Rules 2010, in that, there being several Plaintiffs, GUYO TUKU has not been authorized by the Plaintiffs to swear the Verifying Affidavit, and no such authority has been filed.
2. This being a representative suit, no notice has been given to interested persons as dictated by Order 1 Rule 8 (2) of the Civil Procedure Rules 2010 and in that respect alone the suit is incompetent and a non-starter.
3. That the Plaintiffs lack legal capacity to sue or continue with suit that Tawaho Youth Group being unincorporated body, there are no minutes or other writing recognizing the legal status of the Plaintiffs and/or authorizing all or any of them to sue.
4. Further that the Plaintiffs lack the legal capacity to institute or maintain the present suit since they represent an unlawful body in law.
5. That Tawaho Youth Group, being unincorporated body and without a common seal, lacks legal capacity to either acquire or deal

in registered land in its own name and as such the purported registration of title be null and void and of no legal effect.

6. In the premises the entire suit is bad in law, incompetent, a non-starter, raises no reasonable cause of action, an abuse of the Court Process and Merits to be struck out with costs to the Defendants.

DATED at ISIOLO this 20th day of October, 2021

MUKIRA MBAYA & CO

ADVOCATES FOR DEFENDANTS

2. The Preliminary Objection was canvassed by way of written submissions.

3. The defendants provided extensive submissions which supported Grounds 1, 2, 3, 4, and 5 of the Preliminary Objection. They also proffered authorities in support of grounds 3 and 4 of the Preliminary Objection. These authorities are good authorities in their facts and circumstances. Regarding ground 1 and 2, the defendants proffered the apposite orders in the Civil Procedure Rules which they claim to have been infringed by the plaintiffs. I agree that their narration of the contents of the said orders is correct. Indeed this fact has not been controverted by the plaintiffs.

4. Regarding ground 5, the defendants say that the Title Deed proffered as proof of ownership of the disputed parcel of land was issued under the repealed Registered Land Act (Cap 300 of the Laws of Kenya) on 30th October, 2013 long after the Registered Land Act was repealed. In their written submissions, the plaintiffs completely avoided this issue. It raises a pure point of law. The title held by the plaintiffs is void ab initio. It has no legal validity. A litigant cannot file a claim based on a non-existent property. The title may even be a forgery. On this ground alone, this court is entitled to uphold the Preliminary Objection.

5. The submissions filed by the plaintiffs do not in any way impeach the integrity of the submissions proffered by the defendants. They proffered the case of *D.T.Dobie Company (Kenya) Limited Versus Joseph Muchina & Another [1980] eKLR* where the court opined as follows;

“A court of Justice should aim at sustaining a suit rather than terminating it by summary dismissal. Normally a law suit is for pursuing it.”

6. The statement by the *D.T Dobie case (Supra)* is a very good statement. It however cannot sanitize a case where the title upon which it is based is void ab initio. Where a title is issued under a non-existent law, the court would be promoting illegalities and forgeries if a court allows a case based on such documents to proceed before it. Not court of law can countenance this.

7. Having considered the totality of the circumstances and facts surrounding this case, I do uphold the Preliminary Objection and the following orders are issued:-

a) This Suit is hereby struck out, and hence dismissed.

b) Costs are awarded to the defendants.

DELIVERED IN OPEN COURT AT ISIOLO THIS 21ST DAY OF MARCH, 2022 IN THE PRESENCE OF:

Court Assistant: Balozi

Nyenyire present for the plaintiffs

Mukira Mbaya for defendants - Absent

HON. JUSTICE P. M. NJOROGI

JUDGE