



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

ELC NO. 120 OF 2012

ANNA MUTULI (Suing on her behalf and also on behalf of 185 others).....PLAINTIFFS

- VERSUS-

- 1. SHREEJI ENTERPRISES (K) LIMITED.....1ST DEFENDANT**
- 2. THE COMMISSIONER OF LANDS.....2ND DEFENDANT**
- 3. THE REGISTRAR OF LANDS MOMBASA**

RULING

[1] The plaintiff in this case filed a notice of motion dated 28th September, 2012 praying for leave to file this suit on behalf of 185 families herein as a representative suit. She further prayed for a temporary injunction against the 1st defendant, its agents, employees/or anybody acting on its direction from demolishing the plaintiffs house standing on Plot No. 1816/V/MN Miritini area pending the hearing and determination of this application inter partes among other orders. In her supporting affidavit she stated

"1. That I am the plaintiff herein hence competent to swear this affidavit on my own behalf and also on authority from other plaintiffs to swear this affidavit (hereto annexed and marked as "AM 1" is the photocopy of the letter of authority)."

[2] This application was filed under Section 3A of the Civil Procedure Act (Cap. 21) Laws of Kenya and Order 40 Rules 1(a) 2,3 and 4 and Order 1 Rule 8 of the Civil Procedure Rules 2010. A copy of the Authority to Act and names, identity card numbers and signatures of the 186 persons was annexed to the motion. Based on the evidence produced before the court, leave was granted to the plaintiff to file this suit on her own behalf and that of 185 families, a temporary injunction was issued against the 1st defendant from demolishing the plaintiffs houses standing on Plot No. 1816/V/MN within Miritini Area pending the hearing of this application. these orders have been extended from time to time.

[3] The plaintiff filed this suit (now renamed 120A of 2012) She filed a verifying affidavit on 28th September, 2012 and stated in the verifying affidavit,

"1. I am the plaintiff herein hence competent to swear this affidavit on my own behalf and also has the authority from other plaintiffs to sign the affidavit."

2. I confirm and verify that the averments contained in the plaint are correct and true."

The notice of motion now comes for ruling on the issue of temporary injunction issuing against the 1st defendant from demolishing the house of the plaintiffs standing on Plot No. 1816/V/ MN. The advocates for the respective parties have filed elaborate submissions on this issue.

[4] The 1st defendant has also filed a supplementary submission. It is this supplementary submission that I would like to deal with first. The 1st defendant submits that the plaintiff was charged in Mombasa Chief Magistrate's Court Criminal Case no. 3214 of 2012 and found guilty of false swearing contrary to Section 114 of the Penal Code and convicted under Section 215 of the Criminal Procedure Code. She was also charged with forgery of letters of authority (in this case) contrary to Section 347 of the Penal Code and convicted under Section 215 of the Criminal Procedure Code. A judgment dated 1st November, 2013 by the Resident Magistrate's court in Mombasa was annexed to the submissions. These convictions arose from the proceedings in this case. It is therefore obvious that the plaintiff had no authority to bring this suit on behalf of the 185 persons she claimed to represent. Her affidavit supporting the plaint is false.

[5] The suit herein which is a representative suit does not comply with Order 1 rule 13 and 13(2). It is therefore incurably defective and is incapable of being redeemed by amendment.

The verifying affidavit supporting the suit is false. It cannot be amended or retracted being evidence under oath. I have no option but to expunge it from the record. The orders granted by this court to the plaintiffs to file a representative suit were granted in error and induced by falsehoods of the plaintiff. Had the court been given the true facts those orders should not have been granted. I hereby set them aside.

[6] We are now left with a representative suit by a person without any authority from other parties to the suit and whose verifying affidavit is false and has now been expunged from record. This suit cannot therefore stand and I hereby strike it with costs to the respondents.

Dated and delivered in open court at Mombasa this 26th day of June, 2014.

S. MUKUNYA

JUDGE

26.6.2014

In the presence of:

Miss Adagi for the respondent.