REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

CIVIL SUIT NO. 107 OF 2012.

FRED K. SABAI

RICHARD KIPSOI

DANIEL KAPKARA.....PLAINTIFFS.

DANIEL CHEMAKET

ELIUD SICHEI

VERSUS

DISTRICT LAND ADJUDICATION SETTLEMENT OFFICER, TRANS NZOIA

ATTORNEY GENERAL

PETER CHEMASWET.....DEFENDANTS

NATHAN JINDET NDIWA

JAMES BOIYO BELLO

R U L I N G.

1. The first and second defendants filed a notice of preliminary objection dated 17/4/2014 in which they seek to have the plaintiffs' suit dismissed with costs to be borne by the first plaintiff on the following grounds:-

(a) ***That the suit is incompetent having been filed contrary to the requirements of Order 1 Rule 8 (1) and (2) of the Civil Procedure Rules.***

(b) That there is no authority as required under Order 1 Rule 13 of the Civil Procedure Rules.

c. That the suit herein is an abuse of the process of the Honourable court.

2. Mr. Wabwire for the applicants argued that the plaintiffs' suit is a non starter as provisions of Order 1 Rule 8 (1) and (2) and 13 were not complied with. He relied on the case of **Law Society of Kenya vs. Commissioner of Lands & 2 others (KLR) 1 (Environment and Land).** The preliminary objection

was also supported by Mr. Yano for 2nd, 3rd, 4th and 5th plaintiffs as well as Mr. Ngeywa for 3rd to 7th defendants.

3. I have considered the Preliminary Objection raised herein. In this case there are five (5) plaintiffs. There is no averment in the plaint that any of them is representing the other plaintiff. The provisions of Order 1 Rule 8 (1) and (2) and 13 envisage a situation where there are numerous plaintiffs which will then call for one or more of them to represent the rest. This is when the authority of the rest is supposed to be in writing and signed by the party giving it and it is then filed in the case.

> This is not the case in the present suit. The five plaintiffs have all come to court in their individual capacities and they are not representing any other persons as to invoke the provisions which have been cited in the preliminary objection.

4. In the case cited by the applicants the Law Society had sued on behalf of its members. The Law Society had averred that it was in court on behalf of 100 members of its branch in Eldoret and on behalf of other members of the legal profession as well as members of the public. The judge in that case found that the Law Society which was acting on behalf of numerous other persons had not complied with the provisions of Order 1 Rule 8 and 13 of the Civil Procedure Rules.

This case is not relevant to the present situation. I find that the preliminary Objection lacks merit. The same is hereby dismissed with no order as to costs.

It is so ordered.

[Dated, signed and delivered at Kitale on this 17th day of September, 2014.]

E. OBAGA.

JUDGE.

In the presence of Mr. Wabwire for 1st and 2nd defendants and Mr. Yano for 2nd to 5th plaintiffs and Mr. Teti for Mr. Ngeywa for 3rd to 7th defendants. Court Clerk – Kassachoon.

E. OBAGA.

JUDGE.

17/9/2014.