



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. APPLICATION NO. 138 Of 2013

ESTHER LAUZI TUNGU 1ST APPLICANT

SOPHIA NZI TUNGU 2ND APPLICANT

ELINAH MWAKA TUNGU 3RD APPLICANT

• V E R S U S -

ISAAC ONYANGO

T/A. ISAAC ONYANGO & COMPANY ADVOCATES RESPONDENT

RULING

[1] A preliminary objection was raised by the respondent that this Court has no jurisdiction to hear and determine the application dated 2nd July 2013. The objection was based on Section 13 of the Environment and Land Act, Act No. 19 of 2011 of the Laws of Kenya. The argument being that Section 13 (2) of the Act sets the matters the Court can deal with. It was argued that the issue in this application has nothing to do with use, occupation or title to land. The respondent argued the matter concerns a relationship of advocate and his client. The respondent relied on *Civil Appeal No. 50 of 1989 owners of the motor vessel "Lillian S" v Caltex Oil (Kenya) Ltd* on the issue of jurisdiction.

[2] The applicant opposed the application and urged the court to dismiss the Preliminary Objection. He argued that the Court had power under Section 13 (2). The applicant argued that the application was about return of title to land and a sale of land. The respondent argued that the Objection was made in bad faith. The applicant argued that the application was raised in the earliest opportunity, and that under Order 52 rule (4) (2) the Court means the High Court. He argued that this is not a High Court but it is Environment and Land Court. The applicant disputed the averments of the respondent. He argued that this Court has power. he said Order 42 of the Civil Procedure Rules 2010 grants court power to order any advocate to deliver accounts and document to any court. Further that Section 1(3) of the Civil Procedure Act empowers the Court to further overriding principles with the help of the parties.

This Preliminary objection is unmerited. This application arose out of the sale of CR. NO. 24698 in the name of Rodgers Tungu Mwalimu deceased. The respondent advocate was instructed by the applicants to act for them on 2/5/2012. The respondent admits as much in his affidavit sworn on

15/7/2013. The applicants alleged that the conduct of the transaction was taking such a long time and changed their advocate to their current advocates.

Thereafter disagreements arose between the applicants and respondents culminating in the present application.

The issue raised herein falls squarely on the jurisdiction of this court. This objection is nothing but a delaying tactic. It is unmerited and is dismissed with costs.

Dated and delivered in open court at Mombasa this 18th day of October, 2013.

S.N. MUKUNYA

JUDGE

18.10.2013

In the presence of:

Wachira Advocate for the respondent.

Marende Birir Advocates not present - served.