



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL APPEAL NO. 176 OF 1999**

**SHUME ABDALLA ..... PLAINTIFF**

**- Versus -**

**1. JAMES MUGAMBI**  
**2. MUNICIPAL COUNCIL OF MOMBASA .....DEFENDANTS**

**RULING**

The application of 10<sup>th</sup> May 2006 urges this court to strike out the entire suit herein as disclosing no reasonable cause of action. The application is brought under Order VI Rules 13(1) (a) of the old Civil Procedure Rules and no evidence was or could be offered in support.

The Defendants argue that the plaintiff brings this suit on behalf of her three tenants without demonstrating that she has authority to prosecute it on their behalf. In other words the plaintiff lacks locus. Although the plaintiffs counsel did not attend court at the hearing, the application was opposed on the basis of grounds dated 14<sup>th</sup> June 2006.

In the plaint, the plaintiff alleges that she is the owner of Plot No. 176 Section 1 Mainland (*the suitland*). She has allowed three persons to construct permanent houses thereon. She is aggrieved by what she calls an irregular and illegal allocation of her land by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant under a new number, MN/1/1708. The plaintiff seeks the following prayers-

***(i) A declaration that the 1<sup>st</sup> defendant was allotted by the second defendant Plot No. MN/1/1708 illegally and by this reason the same should be nullified.***

***(ii) An injunction to restrain the first defendant by himself, his servants or agents or otherwise howsoever, from harassing threatening and or demolishing the houses owned by the tenants named in paragraph 4 of the plaint pending the determination of this suit.***

My understanding is that the tenants built the houses on the suitland under the unique concept of the Swahili house. The tenants own the houses but pay ground rent to the owner. This is the crux of ground 5 of the grounds of opposition which reads as follows-

***“That it is naive to suggest that the plaintiff does not have a cause of action when the houses cited in the application stands on her land and receives ground rent in respect of the same.”***

What I understand to be the plaintiff's allegation is that she stands to suffer loss of ground rent payable by the tenants if their houses are demolished or removed. Secondly, and quite apart, that the allocation of her land to the 1<sup>st</sup> defendant is illegal and she seeks for its nullification. I have no doubt that the possible loss of rent and the land are personal to the plaintiff and are grievances upon which she can bring an action.

For the reason given I am unable to strike out the suit only on the question of locus without compelling evidence that the plaint is so hopeless that it should not be allowed to pend any further. The application is dismissed with costs.

*Dated and delivered at Mombasa this 22<sup>nd</sup> day of March, 2012.*

**F. TUIYOTT**  
**JUDGE**

**Dated and delivered in open court in the presence of:-**

**No appearance for Plaintiff**  
**Umara for the Defendants**  
**Court clerk - Moriasi**

**F. TUIYOTT**  
**JUDGE**