



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MOMBASA

Civil Case 35 of 2011

IN THE MATTER OF: PARCEL OF LAND PLOT NO.KWALE/MWAVUMBO/4

AND

IN THE MATTER OF: SECTION 38 OF THE LIMITATION OF ACTION ACT (22)

AND

IN THE MATTER OF: ORDER 37 RULE 7 AND 8 OF THE CIVIL PROCEDURE ACT

BETWEEN

ABBAS M. YUSUF APPLICANT

V E R S U S

MOHAMED OSMAN SAID RESPONDENT

RULING

1. The Applicant filed an Originating Summons on 3rd March 2011 seeking to be declared the legal owner of Kwale/Mwavumbo/4. He named the registered owner thereof MOHAMED OSMAN SAID as the Respondent.

2. The Applicant subsequently applied and was granted leave to serve the summons by way of advertisement in the Daily Nation or Standard Newspaper. Nadia Mustafa and Mohamud S. N. Said (*hereinafter jointly "the administrators"*) filed a response and promptly filed an application dated 29th March 2012 in which they seek:-

(a) That the Originating Summons dated 3rd February 2011 and amended on 20th July 2011 be struck out and the suit herein dismissed.

(b) The costs of this application and of the dismissed suit be paid by the Plaintiff.

This is the application I am asked to decide.

3. The Applicant neither filed a reply to the application nor appeared at the hearing of the application notwithstanding that his advocate had been served.

4. This is not a matter to detain the court! The Administrators (who are the joint administrators of the estate of the Respondent) have shown court a Certificate of Death evidencing that the Respondent died on 2nd June 2007. This was about four (4) years prior to the filing of these proceedings. It is little wonder that the Applicant was unable to effect personal service of the Summons on the named Respondent and had to obtain orders for substituted service.

5. An action filed against a dead person is a *nullity abinitio*. These proceedings are a nullity. The application of 29th March 2012 is allowed. The suit is hereby struck out with costs to the Administrators to be met by Abbas M. Yusuf the Applicant.

Dated and delivered at Mombasa this 14th day of June, 2012.

F. TUIYOTT
JUDGE

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

Adaki for the Administrators
Muchiri for Abware for the Applicant
Court clerk – Moriasi

F. TUIYOTT
JUDGE