



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 663 of 2005

1. Land and Environmental Law Division
2. Subject of main suit: 2.1. Land – Fraud
 - 2.2. Sale of Land. LR Kilifi/Jimba/669
 - 2.3. Transfer of land without consent of Land Control Board
 - 2.4. Land registered in 1st defendants name
 - 2.5. Orders to declare transfer fraud, null and void.
3. Subject of application – 31 October 2007
 - a) That the plaintiff is now deceased
 - b) To substitute deceased with new plaintiff Mohamed Shaibu Shosi as legal representative
4. Held:
 - a) Application granted

Deceased be substituted

Obiter: The advocate Madzayo & Co. Advocates no longer exists as principal is now judge of industrial Court. Issue of presentation required to be dealt with.

5. Case law and statute
 - a) Earlier orders of Rawal J of 30.10.07
 - b) Order XXIII r 1,3 (2) and 12 Civil Procedure Rules
6. Advocates:

D.T. Mugambi of Mugambi & Co. Advocates for the plaintiff/applicant – present

D.O. Odero of Timany & Co. Advocate for 1st and 2nd respondent – present

Madzayo Mrima & Co. Advocates for the 3rd respondent – absent

A.M. Sitima for Attorney General the 4th defendant - present

MOHAMED SIAKA ALI.....PLAINTIFF

VERSUS

SUNPALM LIMITED.....1ST DEFENDANT

ISSA TIMANY T/A TIMAMY & COMPANY ADVOCATES

STEWART MADZAYO T/A MADZAYO & CO. ADVOCATES...3RD DEFENDANT

THE CHIEF LAND REGISTRAR.....4TH DEFENDANT

RULING

1: Procedure

1. The main suit in this court concerns fraud in a land case. The land in question LR Kilifi/Jimba/669 was to be sold and or transferred. The plaintiff alleges there was no Land Control Board. He blamed the advocates dealing with the matter of fraudulently transferring the suit land to the 1st defendant.

2. Preliminaries in this case was dealt by Rawal J who has since been transferred to the Family Division. The issue of the plaintiffs locus arose and by her orders of 30.10.07 she gave orders that the plaintiff locus be dealt with.

3. The plaintiff had since passed away. Leave to review the suit was granted.

II: Application 31.10.07

4. By an application of 31.10.07 the plaintiff seeks leave to enjoin a legal representative to this matter instead of the plaintiff Mohamed Siaka Ali who has since passed away. That one Mohamed Shaikh Shosi be substituted as the plaintiff.

5. The state left it to court. The 1st and 3rd respondent did not attend the hearing of this application. The 2nd respondent opposed the application on grounds that this matter was time barred. He did not mention to this court that he has filed an appeal against Rawal J's orders giving the plaintiffs leave to make such application to revive this suit.

III: Finding

6. There are orders of Rawal J which unless appealed against and or varied, the respondent No.2 must abide by the said orders. There is the intention to appeal. This must be perused.

7. In the meantime the application be and is hereby granted. That the legal representative Mohamed Shaibu Shosi be substituted in place of the deceased Mohamed Siaku Ali in this case. That the plaintiffs is to amend his plaint to reflect this.

8. Costs to be in the cause.

Dated this 4th day of March 2008 at Nairobi.

M.A. ANG'AWA

JUDGE

D.T. Mugambi of Mugambi & Co. Advocates for the plaintiff/applicant – present

D.O. Odero of Timany & Co. Advocate for 1st and 2nd respondent – present

Madzayo Mrima & Co. Advocates for the 3rd respondent – absent

A.M. Sitima for Attorney General the 4th defendant - present