



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELC CIVIL SUIT NO. 145 OF 2017

ANDREW WASSWA ATETWE.....PLAINTIFF

VERSUS

THE REGISTERED TRUSTEE.....1ST DEFENDANT

THE GENERAL OF THE SALVATION ARMY

THE TERRITORIAL COMMANDER

THE SALVATION ARMY, KENYA EAST TERRITORY...2ND DEFENDANT

THE DIVISION COMMANDER

THE SALVATION ARMY, COAST DIVISION.....3RD DEFENDANT

JUDGEMENT

1. The plaintiff has filed this suit against the defendants jointly and severally for:-

(i) A mandatory injunction to restrain the defendants, by themselves, their servants and/or agents or otherwise howsoever from evicting the plaintiff from the suit premises unless and until he is paid the costs demanded or given an undertaking by the defendants to enable him give vacant possession.

(ii) Orders for the defendants to pay the plaintiff costs of representing the defendants in court litigation an amount to be agreed by the two parties or one percent of the value of the property indicated in the power of attorney.

(iii) Costs of this suit and interest thereon at court rates.

(iv) Any other or further relief that this honourable court may deem fit.

2. The defendants who were duly served with copies of plaint and summons to enter appearance and/or file defence within the stipulated period. Interlocutory judgment was then entered.

3. It is the plaintiff's case that he is a senior soldier of the Salvation Army. In 2006, he was granted a power of attorney by the Salvation Army through a Commissioner of the Salvation Army and Territorial Commander for Kenya East Territory. The purpose of the power of attorney was to represent the 1st defendant in several matters pending before court. He seeks payment to cater for court attendance fees in the year 2006. That through the power of attorney he was given a right to occupy the premises which he does to date. The plaintiff wrote to the defendants a proposed negotiated settlement or one percent of the value of the property defended. That by virtue of Article (c) of the 1st defendant's Article of Association, provides that a member of the association which the plaintiff is one, is entitled to remuneration. At page 4 it states;

"...provided that nothing herein contained shall prevent the payment to the members of the Association a reasonable remuneration for goods or power supplied or services rendered"

4. I have considered the pleadings, the evidence tendered, the exhibits and the written submissions. The issue for determination is whether the plaintiff has made a good case against the defendants.

5. The plaintiff's claim seems to be grounded on paragraph 12 of the plaint which states;

“When the plaintiff approached counsel for the defendants for facilitation of payment of costs as promised by defending and prosecuting the cases, counsel told him that the defendants had assured him that they would settle the matter of costs directly with the plaintiff, in accordance with the regulations governing soldiers of the salvation army since the plaintiff is a soldier of the salvation army”

6. It appears the defendants had an advocate representing them in the matters before the lower court. The power of attorney meant that the plaintiff appeared as a representative of the defendants to give evidence. It does not entitle him to any fees as he was not an advocate. Order 9 rule 2(a) of the Civil Procedure Rules provides that:

“The recognized agent of parties by whom such appearances, applications and acts may be made or done are:-

(a) Subject to approval by the court in any particular suit, persons holding powers of attorney, authorizing them to make such appearances and applications and do such act on behalf of parties”.

7. I have gone through the entire proceedings in the Resident Magistrates Court. The defendant herein were represented by S. O. Oguk Advocate. The plaintiff appeared as a witness. He is not entitled to any remuneration fee as he does not qualify to be a recognized agent. I have seen the power of attorney donated to the plaintiff. It was for purposes of appearing in court as a witness and/as representative in the several suits pending before court. It does not give him any entitlements to the defendants' properties.

8. The defendants can in their own volition decide that they can give the plaintiff as a token of appreciation for the work done and the time he took to testify in court. This is an issue that the parties can discuss and come up with an agreeable figure.

9. All in all I find that the plaintiff has no cause of action against the defendants. I find that he has failed to prove his case to the required standards. I hereby dismiss the plaintiff's suit with no orders as to costs.

It is so ordered.

Dated and signed in Nairobi on this.....day of...2018

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L. KOMINGOI

JUDGE

Dated and delivered at Mombasa on this 5th day of October 2018.

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A. OMOLLO

JUDGE