

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

LAND CASE NO. 334 OF 2015

(FORMERLY PETITION NO. 34 OF 2015)

KATANA KARISA & 7 OTHERS.....PETITIONERS

-VERSUS-

JUMA MOHAMED ZAAM & 3 OTHERS.....RESPONDENTS

RULING

1. For determination is the notice of motion dated 29th March 2017 brought under Order 8 rule 2, Order 2 Rule 15 (1) (d) & (2) of the Civil Procedure Rules (2010) seeking to have the amended petition, notice of motion and supporting affidavit dated 27.2.2017 struck out. The basis for seeking to strike out being that the leave granted to amend expired on 22.2.2017.

2. The motion is opposed by the replying affidavit of Katana Karisa sworn on the 12th May 2017.

3. I have perused the amended pleadings as filed by the petitioner. Attached to the pleadings is receipt No 8141635 for Kshs 75/= being payment of amended certificate of urgency. The said receipt is dated 6.3.2017. The assessment by the Court assistant also records Kshs 75/= as the fees payable on the certificate of urgency. I have brought out the above facts to explain that the pleadings sought to be struck off have not been paid for. I will therefore not consider the motion on its merits.

4. I have looked at the application dated 25.10.2016 which sought leave to effect the amendments. What was paid for was only the costs of that application which was assessed at Kshs 1575/=.

5. Consequently given that the amended petition and amended notice of motion have not been paid for, they do not form part of this Court's record. Thus there is nothing to be struck out based on the reasons stated in the motion of the 1st Respondent. However the amended pleadings in the Court file shall be and are hereby struck out from the record for non-payment of Court fees. The applicant is granted the costs of the application for moving the Court.

Dated, signed & delivered at Mombasa this 3rd October 2018

A. OMOLLO

JUDGE