



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENTAL AND LAND COURT AT MOMBASA**

**ELC CASE NO 137 OF 2021**

**ZUWENA OMAR SOMOBWANA.....PLAINTIFF**

**VERSUS**

**GAFFER OMAR SOMOBWANA.....1<sup>ST</sup> DEFENDANT**

**KIDOGO BASI HOUSING COOPERATIVE.....2<sup>ND</sup> DEFENDANT**

**RULING**

By a notice dated 3<sup>rd</sup> August 2021 the 2<sup>nd</sup> Defendant raised a preliminary objection on the following points;

1. That the application is misconceived, bad in law and an abuse of the court process.
2. That the Plaintiff does not have the requisite locus standi to institute this suit and should therefore be struck out with costs.
3. That the Plaintiff has instituted the suit on behalf of his Deceased father, the late Omar Somobwana Omar without having being issued with a Grant of Letter of Administration Intestate, Grant of Probate and Grant of Ad Litem, whose action is contrary to the provision of the Laws of Succession Act.
4. That without prejudice to the above, the suit herein is incompetent, incurably and fatally defective and as such ought to be struck out.
5. That the suit against the 2<sup>nd</sup> Defendant ought to be dismissed with costs to the above named 2<sup>nd</sup> Defendant.

The Plaintiff submitted that she gave the factual background of her claim in relation to the movement of the suit property which so far is not denied. Under Section 28 of the Land Registration Act No.3 of 2012 whether the 1<sup>st</sup> Defendant is holding the suit property in a trust is the question to be determined by this Honourable court after deduction of evidence. The Plaintiff humbly submit that the 2<sup>nd</sup> Defendant is erroneously attempting to turn proceedings under section 28 of the land Act which are properly before this court. That the suit is properly before this court under the aforesaid provisions of the law.

This court has considered the preliminary objection and the submissions therein. The 2<sup>nd</sup> Defendant submits that the Plaintiff has instituted the suit on behalf of her deceased father, the late Omar Somobwana Omar without having being issued with a Grant of Letter of Administration Intestate, Grant of Probate and Grant of Ad Litem, whose action is contrary to the provision of the Laws of Succession Act. The plaintiff argues that she gave the factual background of her claim in relation to the movement of the suit property which so far is not denied and is claiming under Section 28 of the Land Registration Act No.3 of 2012, that is customary trust. I find this is a matter of evidence which will have to be established during the trial. I find that the objection is not merited and the same is overruled. Cost to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 8<sup>TH</sup> DECEMBER 2021.**

**N.A. MATHEKA**

**JUDGE**