



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 55 OF 2018

1. YUSUF JARO MOHAMED ACHU

2. NAZO YARMOHAMED ACHU

3. JAMILA YARMOHAMED ACHU (Suing as the beneficiaries of the

ESTATE OF YARMOHAMED ACHU.....PLAINTIFFS

VERSUS

1. SOLOMON NYAMBU

2. POLYCARD MAGHANGA

3. MWAKILEMBA NYANGE.....DEFENDANTS

RULING

(Plaintiffs filing suit for eviction; emerging that all defendants were dead when the case was filed; suit struck out)

1. The application before me is that dated 20 March 2019 and it seeks orders that this suit be struck out as against the defendants for the reason that the suit was filed when the defendants were already dead. The application is opposed.

2. This suit was filed on 9 March 2018 against three defendants. In the suit, the plaintiff did describe the defendants as “male adults living and working for gain within Mombasa County.” In the suit, the plaintiffs sought orders to evict the defendants from the land described as Plot No. CR Division No. 36962 (Original No. 217/3) and for them to give vacant possession by removing their temporary Swahili houses erected on the land.

3. A Notice of Appointment of Advocate “under protest” was made by Mr. Nyange Sharia Advocate and thereafter this application was filed with Mr. Nyange himself swearing the supporting affidavit. He has annexed Certificates of Death showing that the 1st defendant died on 29 December 1988, the 2nd defendant on 27 March 2001, and the 3rd defendant 4 June 1978. He has pointed out that the named defendants cannot defend this suit.

4. Grounds of Opposition and a Replying Affidavit were filed to oppose the motion. It is argued that Mr. Nyange is not competent to swear the affidavit on behalf of deceased persons as the only person who is capable of swearing the affidavit is the administrator of the estate of the defendants. The replying affidavit, which is sworn by counsel for the plaintiffs further avers that a demand letter was sent and the same was replied to where an offer for a settlement was made.

5. I have considered the issues herein. I think to me it is irrelevant who has sworn the supporting affidavit to the application. What is important to me is the information that the defendants are dead and were dead by the time this suit was filed. Irrespective of whatever clever arguments the plaintiffs may make, one cannot escape the fact that this suit was filed against people who were long dead. It is not permissible for one to sue a dead person. In fact I find it interesting that the plaintiffs want orders of eviction and I wonder how they will go about such a suit.

6. I do not see the need of saying much in this application. It is obvious that the suit is unsustainable as it was filed against persons who were not alive.

7. This suit is struck out. I make no orders as to costs.

DATED, SIGNED and DELIVERED at MOMBASA this 5th day of March, 2020.

MUNYAO SILA

JUDGE.

IN THE PRESENCE OF:

Mr. Nyange for the applicant.

Mr Bosire for the respondents.

Court Assistant; David Koitamet.