



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT MAKUENI**

**ELC CASE NO. 58 OF 2019**

**(Formerly Machakos ELC Suit No. 321 of 2012)**

**DANIEL KYALO LUA**

**WAMBUA LUA**

*(Suing as the administrators of the Estate of)*

**JAMES LUA MAIA ..... PLAINTIFFS/RESPONDENTS**

**VERSUS**

**RICHARD MANTHI MUINDI ..... DEFENDANT/APPLICANT**

**RULING**

1. The application for determination is dated 17<sup>th</sup> October, 2019 and is brought under Order 2 Rule 15 (1)(b) & (d) Order 51 Rules 1 and 13 of the Civil Procedure Rules and Sections 13 (1) and (2) and 19 (2) of the Environment and Land Act. It seeks;

**a) THAT the Court do strike out the suit herein.**

**b) THAT costs of this application be granted.**

2. The application is supported by the grounds on its face the Defendant's/Applicant's affidavit sworn on the same date. He deposes that the suit is a non starter, scandalous, frivolous, and vexatious and was brought by parties without the requisite legal capacity to institute the suit. He has also deposed that he is in occupation of land parcel Makueni/Kilome/2163 and not plot 12 Kilome Land adjudication section.

3. He has exhibited unconfirmed letters of administration as annexure **RMM-1** and deposes that they were revoked on 27<sup>th</sup> September, 2018. A copy of the ruling in Machakos High Court Succession Cause No 150 of 1992 is exhibited as annexure **RMM-2**.

4. It is also his deposition that the suit has weighed heavily on him and his family for the last 7 years yet it cannot succeed come what may. He has also exhibited a certificate of ownership as annexure **RMM-3** to show that the subject matter of the suit to wit plot 12 Kilome Land adjudication section belongs to James Lua Maina and is intact. He deposed that it is clear from the map exhibited as annexure **RMM-4** that plot 12 adjoins his parcel of land parcel 2163. He has also exhibited an extract from the adjudication records as annexure **RMM-5**.

5. Annexure **RMM-6** is a certificate of ownership to show that he is the owner of parcel 2163 and annexure **RMM-7** is the title deed. He has also exhibited a search certificate as annexure **RMM8** to show the status of his land as at 09<sup>th</sup> April, 2018.

6. The application is opposed through the replying affidavit of Geoffrey Wambua Lua sworn on 13<sup>th</sup> December, 2019. He has accused the Defendant/Applicant of brewing disharmony in conjunction with one of the beneficiaries and contends that the instant application is meant to dismember the property from the deceased's estate.

7. He has deposed that the only legal and equitable remedy available to the parties is a joint trial of the issue of the subject property as an asset of the estate or stay of the proceedings herein but not striking out. It's also his deposition that the application offends section 159 of the Constitution which focuses on substantive justice.

8. Directions were given that the application be canvassed through written submissions but there are no submissions by the Plaintiffs/Respondents on record.

9. Relying on section 3 of the Law of Succession Act and section 2 of the Civil Procedure Act, the Defendant/Applicant submitted that the Plaintiffs'/Respondents' capacity was extinguished when the grant under which they had filed the suit was revoked.

10. He submitted that the suit cannot be amended because the succession of the estate of James Lua Maia is currently underway in Makueni High Court Succession Cause No. 35 of 2018 and there is no way of knowing who the administrators will be. He contends that the appointed administrators can always bring in a fresh suit if they deem it fit.

11. It was also his submission that he is not in occupation of the suit land and that he has demonstrated the distinction between his land and the suit land. He contends that the suit is a gross abuse of the court process, frivolous and purely intended to vex and unnecessarily embarrass him. He relies on **Trust Bank Ltd –vs- Amin Company Ltd (2000) KLR, 164** where the Court observed that;

*“..a pleading of an action is frivolous when it is without substance or groundless or fanciful and is vexatious when it lacks bona fides and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble or expense.”*

12. Having considered the application together with all the annexures as well as the Defendant's/Applicant's submissions, the only issue for determination is whether the suit should be struck out.

13. In the plaint filed on 24<sup>th</sup> August, 2012, the Plaintiffs/Respondents averred that parcel 12 Kilome Land adjudication section (*suit land*) was registered in the name of the deceased, James Lua Maia, but the Defendant/Applicant had unlawfully entered thereon and committed acts of waste. They were therefore seeking a declaration of ownership by the deceased, eviction, permanent injunction, compensation, mesne profits, costs and interest.

14. The Plaintiffs/Respondents relied on the grant issued on 13<sup>th</sup> May, 2002 in Machakos High Court Succession Cause No 150 of 1992. The grant was revoked on 27<sup>th</sup> September, 2018 hence they no longer have capacity.

15. Having looked at the ownership documents exhibited, I am convinced that the suit land is distinct from the Defendant's/Applicant's parcel Makueni/Kilome/2163. Despite their opposition, the Plaintiffs/Respondents are not laying claim to parcel 2163 and have not faulted the ownership documents exhibited. Further, it is clear from the application and entire record that the Defendant/Applicant has no claim whatsoever in the suit land.

16. It is unfortunate that he has been persecuted for all those years and put on edge over nothing at all. I say so because I have read the entire record and it is evident that at some point, he was evicted together with some of his tenants and had to fight Court battles to re-enter and preserve some of his property including farm animals.

17. I do agree with the Defendant/Applicant that indeed, this suit is a non starter, frivolous, vexatious and an abuse of Court process. This is compounded by the fact that the Plaintiffs/Respondents did not even bother to file submissions. Accordingly, the suit is hereby struck out with costs to the Defendant/Applicant.

**Signed, dated and delivered at Makueni via email this 29<sup>th</sup> day of May, 2020.**

**MBOGO C.G.,**

**JUDGE.**

**Court Assistant: Mr. G. Kwemboi**