



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 153 OF 2013

ROWLAND CLEOPAS MARENDE.....1ST PLAINTIFF

NAOMI AWINJA MARENDE 2ND PLAINTIFF

V E R S U S

THE ATTORNEY GENERAL.....1ST DEFENDANT

APC DAVID MBURU 2ND DEFENDANT

APC KAINGI THIANJURI..... 3RD DEFENDANT

APC SAULOH V. MASHA..... 4TH DEFENDANT

RULING

1. By the motion dated 26th March 2014, the Plaintiffs/Applicants sought for the following orders:
 1. ***THAT judgement be and is hereby entered for the Plaintiff against the 1st Defendant.***
 2. ***THAT costs of this application bide in eh cause .***
 3. ***THAT there be such other or further orders as the court my deem fit and expedient to grant in the circumstances.***
2. The motion is supported by the affidavit of Rowland Cleophas Marende. When served, the Attorney General, the 1st Defendant/Respondent, filed grounds of opposition to oppose the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the same disposed of by written submissions.
3. I have considered the pleadings, the written submissions and the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit. I have also taken into account the grounds of opposition.
4. It is the submission of the Plaintiffs that the defence filed by the 1st Defendant is a sham since the 1st Defendant successfully prosecuted the 2nd Defendants for the brutal murder of the Plaintiffs' son. The Plaintiffs are of the view that the defence put forward is a mere denial and is tailored to delay the expeditious and just trial of this action. The 1st Defendant is of the view that the defence filed raises serious triable issues and the onus of proof lies on the Plaintiffs to prove otherwise.
5. In the plaint, the Plaintiffs are praying for both general and special damages against the

Defendants jointly and severally for death of Earnest Ahihah Marende, who was allegedly shot and killed by the 2nd, 3rd and 4th Defendants who served as administration police officers of the Republic of Kenya. I have already stated that the Plaintiffs are of the view that the defence filed by the 1st Defendant is a sham. I have examined the defence filed by the 1st Defendant. The 1st Defendant denied liability claiming that the Attorney General does not condone loss of the citizens life. The 1st Defendant also stated that the Attorney General's office acted within the law to investigate and prosecute the 2nd, 3rd and 4th Defendants leading to their conviction. The 1st Defendant specifically denied liability.

6. The main ground which was ably argued by the Plaintiffs is that the defence is a sham in view of the fact that the 2nd, 3rd and 4th Defendants were convicted for the offence of manslaughter. I think the questions which may arise in this dispute would include first, the question as to whether or not the actions of the 2nd, 3rd and 4th Defendants to shoot at the deceased were either unlawful or were just the use of excessive force. Secondly, whether or not 1st Defendant is vicariously liable for the actions of the 2nd, 3rd and 4th Defendants. It is clear from the questions posed hereinabove that the 1st Defendant's defence is not a sham. It raises very serious issues which can only be canvassed and determined via a trial.

7. In the end, I find the motion dated 26.3.2014 to be without merit.

The same is dismissed with costs abiding the outcome of the suit.

Dated, Signed and Delivered in open court this 13th day of May, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant