



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT ELDORET**

**Civil Case 32 of 2005**

**LORNAH JEBIWOTT KIPLAGAT ..... PLAINTIFF**

**VERSUS**

**RODAH MASIT ..... 1<sup>ST</sup> DEFENDANT**

**ESTHER CHERUIYOT ..... 2<sup>ND</sup> DEFENDANT**

**WINNIE KIBISACH ..... 3<sup>RD</sup> DEFENDANT**

**(Sued as the trustees of Mosop Marichor Women Group of  
Chepkorio)**

**J. W. ODUOR ..... 4<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**COMMISSIONER FOR LANDS ..... 6<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

The Notice of Motion is dated the 27<sup>th</sup> June 2012 and is brought under Order 2 Rule 15, Order 4 and Order 51 of the Civil Procedure Rules (2010) and under Sections 3 and 3A of the Civil Procedure Act and all other enabling provisions of the law.

The applicants seek to strike out the Plaintiff's suit as the same is scandalous, frivolous, vexatious and an abuse of the due process of the law.

The application is supported by the grounds on the face of the Application and on the affidavit of **ESTHER CHERIYOT** made on the 25<sup>th</sup> June 2012.

Counsel for the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants associated herself with the Applicant's submissions.

The Respondent opposed the application and relied on the Grounds of Opposition dated the 26<sup>th</sup> June 2012.

Upon hearing and considering the submissions and arguments of all the learned Counsel, the Court finds the following issues for determination:

- (1) Instructions
- (2) The Plaintiff – its validity
- (3) Verifying Affidavit

On the first issue relating to the instructions, Counsel for the Applicant argues that the suit was commenced without the instructions of the Plaintiff.

The Court finds that this issue of instructions has been canvassed at length and has been determined by a ruling given by Honourable Justice Azangalala on the 3<sup>rd</sup> October 2011 in which he held that there were valid instructions given to the firm of **OGUTU & CO. ADVOCATES**. The Court finds that the Ruling settled and determined the issue relating to instructions and this Court has no mandate to re-open or revisit this issue.

The next issue relates to the validity of the Plaintiff. Counsel for the Applicant argued that the suit was commenced without instructions and that there must be ratification. That the Plaintiff's conduct throughout is not tantamount to ratification. Counsel cited various authorities in support on this line of submission.

The Court has had occasion to peruse the Court record and finds that on the 25<sup>th</sup> May 2005 the Plaintiff filed an Amended Plaintiff which was supported by a Verifying Affidavit dated the 19<sup>th</sup> May 2005.

The Court finds that by so doing the Plaintiff has ratified and validated both the Plaintiff and the instructions.

There is also a **“BY CONSENT”** Order dated 19<sup>th</sup> April 2010 where all the parties herein that is the Plaintiff, the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant, the 3<sup>rd</sup> Defendant, the 4<sup>th</sup> Defendant, the 6<sup>th</sup> Defendant and the 7<sup>th</sup> Defendant have all consented to the filing of a further Amended Plaintiff herein by the Plaintiff.

By conceding to the above and due to the existence of the above mentioned **“Consent Order”** all the Defendants herein are **“ESTOPPED”** from challenging the validity and ratification of the Plaintiff and instructions pertaining thereto.

On the last issue relating to the Verifying Affidavit, had the Plaintiff been filed with no Verifying Affidavit, then the said Plaintiff would have been improperly on record and the Plaintiff would have definitely been struck out for being incompetent.

But that is not the case herein. Was the Verifying Affidavit herein defective? The Court states that the authorities on this issue are legion. The Court of Appeal has been averse to striking out of a Plaintiff on the grounds that a Verifying Affidavit is defective and have allowed Plaintiffs to put in a proper Verifying Affidavit within a specified time.

The Court finds that the Plaintiff by putting in an Amended Plaintiff accompanied by a Verifying Affidavit ratified and rectified all the existing anomalies.

In conclusion the parties herein, with particular emphasis on the Plaintiff, are strongly advised to desist from the side shows and concentrate on the core business of having this matter listed for hearing and final determination.

For all the reasons stated above, this Court finds that the Application is lacking in merit and the same is

hereby dismissed.

Costs shall be in the Cause.

It is so ordered.

Dated and delivered at Eldoret this 13<sup>th</sup> day of July 2012.

**A. MSHILA**

**JUDGE**

**Coram:**

Before: Hon. Mshila J

CC: Andrew

Counsel for Plaintiff/Respondent - Gicheru

Counsel for Defendant/Applicant – Kipseii for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

Kipsei holding brief for Mbiyu for State for 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants.

Kipseii: Applies for certified copies of ruling for purposes of appeal.

Gicheru: No objection. Applies for a hearing date for 2 days.

Court: Certified copies of the ruling to be provided to Counsel for the Applicants. Matter listed for hearing on 27<sup>th</sup> and 28<sup>th</sup> November, 2012.

**A. MSHILA**

**JUDGE**

**13.7.2012**