



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 142 OF 2013

JOSPHAT MUIA KIOKO.....PLAINTIFF

(Suing As The Chairman of the Ukai Self Help Group)

VERSUS

1. ANTHONY MUSYA MAUNDU.....1ST DEFENDANT

2. TITUS MWANIKI.....2ND DEFENDANT

3. ALPHONCE MUOKI KITULIA.....3RD DEFENDANT

4. JAMES NDAMBUKI MAKENZI.....4TH DEFENDANT

5. MOSES MUTUNE.....5TH DEFENDANT

RULING

1. By a Plaint filed herein dated 14th August 2013, Josephat Muia Kioko, suing as the Chairman Ukai Self Help Group prays for Orders:-

a. That the Defendants do hand over the entire project documents to the Plaintiff in supervision of the District Social Service Officer and the DCIO/OCS Mpeketoni and all the Project accounts be audited.

b. That an order do issue directing the Mpeketoni Land Settlement Scheme to cancel the Certificate of Ownership and subsequently delete the Defendants names and substitute the same with the Plaintiff's name and other new office bearers duly recognised by committee members of this project.

c. Costs of and incidental to the suit with interest.

2. Those prayers are premised on the Plaintiff's contention that all the Defendants herein are former office bearers of Ukai Self Help Group a society registered as such under the Society's Act. On or about 26th May 2006, the Defendants ceased to be the Group's officials following an extra-ordinary meeting in which they were voted out. The Plaintiff was among the new office bearers elected at the said meeting.

3. The Plaintiff avers that following their election, they asked the outgoing officials to hand-over within 21 days but they failed to do so. The Plaintiff asserts that shortly thereafter he did with the other office bearers discover that the Defendants had fraudulently registered themselves as trustees to their Group's Plot No. 1/753 Lake Kenyatta Settlement Scheme Phase 1 situated at Mpeketoni in Lamu County. According to the Plaintiff, the Defendants have subsequently blocked them from accessing or exploiting the said parcel of land on the purport that the land is their collective property.

4. In their Statement of Defence dated 30th September 2013 and filed herein on 7th October 2013, the Defendants, inter alia, deny that they secretly registered Plot No. 1/753 aforesaid without the consent of members of the Group and aver that due process was followed.

5. Subsequently and by a Notice of Motion application dated and filed herein on 1st August 2016, the Defendants pray for orders:-

i. That this Honourable Court be pleased to strike out the suit for want of any proper cause of action herein against the

Defendants/Applicants.

ii. That costs be in the cause.

6. The said application is based on the Defendants position that the Plaint as filed is a sham and that it discloses no reasonable cause of action against the Defendants.

7. In a Replying Affidavit sworn and filed herein on 23rd April 2018, the Plaintiff repeats the contents of the Plaint and assets that the Defendants were voted out of office on 26th June 2006. It is further his case that the Defendants failed to hand over to the new office bearers and it was subsequently discovered that they had fraudulently registered themselves as trustees of the Group's parcel of land being the said Plot No. 1/753 Lake Kenyatta Settlement Scheme.

8. The Plaintiff further avers that the Defendants' registration as trustees took place on 31st March 2008 long after the Defendants had ceased to be the Group's officials and the Defendants therefore acted in bad faith in having themselves so registered.

9. I have considered both the application and the response thereto. Both the Plaintiff and the Defendants are members of an association known as Ukai Self Help Group, an association that was registered on 12th July 1995 under the Societies Act.

10. From a List of Documents filed by the Plaintiff herein on 16th September 2016, it is apparent that on 12th March 2001, the Self Help Group registered a trust deed which was lodged at the Land Registry Mombasa on that date in respect of the parcel of land known as Plot No. 753, Lake Kenyatta Scheme 1, Lamu. The Defendants herein were by that instrument registered as trustees of the Group for the said Society.

11. Thus while the Plaintiff contends that the Defendants herein fraudulently registered themselves as trustees long after they were voted out of office, their own documents paint a different picture. As it were, it is only the title deed for the suit property that was issued on the date cited by the Plaintiff. That title was applied for at a time when the Defendants were not only officials of Ukai Self Help Group but were also its registered trustees for the said property.

12. In my mind, it would not make much sense that every time there was an election of new officials of the Group, the documents of title would be changed to reflect that position. That must be the reason the members of the said Ukai Self Help Group entrusted the management of some of their assets to the trustees.

13. A perusal of Clause 9 of the Group's Trust Deed aforesaid provides as follows:-

“9. That the power to appoint and discharge the Trustees shall be vested in the general members of the Group converging in an AGM for the purpose of electing the Group's Management Committee or in a special general meeting convened to discuss any recommendation(s) from the Management Committee about mismanagement of the Trust property by the Trustees or vacant position in the Trustee office arising by whatever means and may reappoint or replace all the sitting Trustees or just part of it.”

14. From the material placed before me, it was evident that in his rush to take over the management of the Group following the elections of 2006, the Plaintiff ignored the above clause in the Trust Deed and sought to wrest control from the dethroned officials by all means possible. That appears to me to be the only reason this suit was filed.

15. As it were, the Defendants do not hold the title to the suit property as individuals in their own rights but as trustees of Ukai Self Help Group. There is no provision for the title deed to be registered in the names of newly elected officials as it is contemplated that their term would only be temporary as was the case with the Defendants. Where the membership feels disappointed with their trustees and covet their removal, Clause 9 of the Trust Deed aforesaid must be complied with.

16. While it is true that the power to strike out pleadings should be exercised very sparingly, I did not find any reason why this case should continue hanging like an albatross on the necks of the Defendants whose only crime is the fact that they were elected as the original trustees of the Self-Help Group.

17. In the circumstances herein I agree with the Defendants that no proper cause of action has been demonstrated to warrant the existence of this suit. The same is frivolous and vexatious. It is struck out with costs to the Defendants.

Dated, signed and delivered at Malindi this 28th day of March, 2019.

J.O. OLOLA

JUDGE