



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**MISC CIVIL APPLICATION NO. 13 OF 2018**

- 1. SILAS MWITHALII MAUTA**
- 2. NICHOLAS KOMBE**
- 3. HARRISON MWAMAU CHITSUNA**
- 4. FESTUS CHARO KARISA**
- 5. MOHAMED MORAA HIRIBAE**
- 6. AGNES NGAMBA**
- 7. THABU LUWALI**
- 8. NAAMAN NYALE KITHI.....APPLICANTS**

**VERSUS**

**PWANI UNIVERSITY.....RESPONDENT**

**RULING**

1. By a Notice of Motion application dated and filed herein on 25<sup>th</sup> May 2018, the eight Applicants herein pray for an order that this Court be pleased to grant them leave to file suit against the Respondent in 'forma pauperis'. The application which is supported by an affidavit sworn by Silas Mwithali Mauta is premised on the grounds that:-

- a. The Applicants are paupers and unemployed and hence incapable of meeting the filing costs of the main suit;**
- b. The Applicants' houses and business premises were destroyed by the Respondent and they are therefore unable to raise any filing fees; and**
- c. That it is in the interest of justice that the orders sought be granted.**

2. In a Replying Affidavit sworn by its Vice Chancellor Prof. Mohammed S. Rajab as filed herein on 14<sup>th</sup> June 2018, the Respondent Pwani University avers that it was sued by some of the Applicants herein in Malindi HCCC No. 70 of 2009. On 31<sup>st</sup> October 2014, the said suit was dismissed and the Respondent's Defence and Counterclaim seeking eviction orders was upheld.

3. The Respondent further avers that subsequent to the Judgment issued on 31<sup>st</sup> October 2014 aforesaid, the Respondents extracted the decree and sought to execute the same but the Plaintiffs in the said case proceeded to the Court of Appeal whereat they filed Malindi Civil Appeal No. 78 of 2016. That Appeal was dismissed on 27<sup>th</sup> November 2017.

4. It is the Respondent's case that thereafter, it did follow due process to execute the Judgment and to evict the Appellants. Squatters who were on the suit property were thereafter evicted without the use of unnecessary force. According to the Respondent three out of the eight Applicants herein were part of the Plaintiffs in the former suit.

5. The Respondent contends that the application to file suit as paupers should not be allowed as the grounds for filing the suit are imaginary,

made up and well calculated to enable the Applicants to extort and reap where they have not sown. According to the Respondent, the Applicants are people of means given the permanent structures of houses which they have exhibited in their supporting affidavit.

6. I have considered the application and the response thereto. I have also considered the oral submissions made before me by the representatives of the parties herein.

7. Order 33 Rule 2 of the Civil Procedure Rules provides as follows:-

**“Every application for permission to sue as a pauper shall contain the particulars required in regard to pleadings, together with a statement that the pauper is unable to pay the fee prescribed in such suit, and the whole shall be signed in the manner prescribed for the signing of pleadings.”**

8. Under Rule 4 of the said Order, where the Court finds that the application is made in the proper form and duly presented to the Court, the Court may proceed to examine the applicant or his agent regarding the merits of the claim. As it were however, in the matter before me, the Applicant has only filed the Notice of Motion application and a brief Supporting Affidavit which dwells on the circumstances leading to the alleged cause of action herein.

9. As filed, there are no particulars in regard to the pleadings sought to be filed against the Respondent University nor is there a Statement that the Pauper is unable to pay the fees prescribed for the filing of any such pleadings.

10. As framed therefore, I am not satisfied that the application before me meets the standard as set out under Order 33 Rule 2 of the Civil Procedure Rules aforesaid. Under Rule 5(a) of the said Order, the Court shall reject an application for permission to sue as a pauper:

**“Where it is not framed and presented in the manner prescribed in rules 2 and 3.**

11. In the circumstances and having found that the application does not meet the threshold set out under Rule 2 of Order 33, this Court has no other way but to reject the application.

12. Each party shall bear their own costs.

**Dated, signed and delivered at Malindi this 28<sup>th</sup> day of March, 2019.**

**J.O. OLOLA**

**JUDGE**