



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

MISC APP NO 9 OF 2018

IN THE MATTER OF AN APPLICATION TO SUE A PAUPER

AND

IN THE MATTER OF CIVIL PROCEDURE ORDER XXXIII RULES, 1, 2 AND 8

BETWEEN

JOHN MARK.....PLAINTIFF/APPLICANT

VERSUS

1. MZEE KAZUNGU POLA MVITA.....1ST DEFENDANT

2. STEPHEN KINOTI KAARIA.....2ND DEFENDANT

3. SALIM ATHMAN RUWA.....3RD DEFENDANT

4. ANTHONY MAINA NJIRU.....4TH DEFENDANT

RULING

1. By this Notice of Motion Application brought under the provisions of Order 23 Rules 1, 2 and 8 of the Civil Procedure Rules and dated 10th April 2018, John Mark, the Plaintiff/Applicant prays for orders:-

1. That leave is granted to the Applicant to sue in forma pauperis in terms of the annexed Statement and Affidavit.

2. That the Applicants proposed Statement of Claim be adopted as the Complaint in the intended suit.

2. The application is supported by a "Statement of pauperism" and a short Affidavit sworn by the Applicant on 4th April 2018 in which he deposes as follows:-

1. That I am the Applicant herein and therefore competent to swear this Affidavit;

2. That I am a Pauper and not possessed of any sufficient means to enable me pay Court filing fees;

3. That in support of my claim for pauperism, I annex herewith a letter dated 4th December 2017 from the Local Chief in Ongata Rongai Location, Kajiado County "JMM 1".

4. That I swear this Affidavit in support of my Prayers contained in the application;

5. That the facts deponed to herein are true to the best of my knowledge, information and belief.

3. The Second, Third and Fifth Respondents have sworn separate affidavits in which they oppose the application. The main ground is that the Applicant has pleaded at paragraph 16 of the Intended Complaint that he has been working as a soldier with the Kenya Defence Forces and there

is no disclosure in his papers as to what has happened with his said employment.

4. The Respondents further contend that the Applicant in the said Plaintiff admits that he is a man of means as the basis of his intended suit is his claim that he gave his title deed to the 1st Defendant who used it to secure bail set at Kshs 100,000/- for the 1st Defendant's son who had been remanded at Shimo La Tewa Prison.

5. I have considered the application and the response thereto. The provisions of Order 23 Rules 1, 2 and 8 cited in the application before me do not deal with the nature of the Orders sought herein and are instead concerned with issues of attachment of debts. In citing the said provisions, it would appear that the Applicant was already presuming a situation where the Respondents indebtedness to him has been proved and is no longer in issue.

6. Order 33 Rule 1(2) of the Civil Procedure Rules defines the term "pauper" as follows:-

"For the purposes of this Order a person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the Plaintiff in the suit."

7. Under Order 33 Rule 2, every application for permission to sue as a pauper shall contain the particulars required in regard to the pleadings together with a statement that the pauper is unable to pay the fee prescribed in such suit and the same shall be signed in the manner prescribed for the signature of pleading.

8. I have considered the statement outlining the Plaintiff's alleged pauperism *vis-à-vis* other pleadings filed by the Plaintiff including the claims made in the Intended Plaintiff. In the said Intended Plaintiff, the Applicant narrates how the 1st Respondent herein approached him and requested for his help in raising Kshs 100,000/- to bail out the 1st Respondent's son. In that regard he states that he gave his title deed to the 1st Respondent who was then able to secure the release of his son.

9. From the material placed before me, it would appear that the Applicant was rewarded for his generosity with half an acre of land by the 1st Respondent. On 30th January 2011, they executed an agreement with the 1st Respondent in which he was to be given another half an acre at a consideration of Kshs 175,000/- to make the total area 1 acre. The Applicant avers that he paid the sum in March 2011 whereupon he brought in a Surveyor to carry out survey and demarcate the Applicant's one acre.

10. According to the Plaintiff, he thereafter returned to his place of work with the Kenya Defence Forces but when his wife visited the area in April 2016, she found the 2nd, 3rd, 4th and 5th Defendants residing on the land without his consent and hence this suit.

11. Considering the above circumstances and the fact that the Applicant was able to pay the sum of Kshs 250/- for this Miscellaneous Application as well as Kshs 550/- for the Notice of Motion application before me, I am not convinced that the Applicant is a pauper as defined under Order 33 Rule 1 (2) of the Civil Procedure Rules.

12. In the circumstances, I do not find any merit in the application. The same is dismissed. I make no order as to costs.

Dated, signed and delivered at Malindi this 14th day of March, 2019.

J.O. OLOLA

JUDGE