



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT MILIMANI**

**ELC CASE NO. 1065 OF 2016**

**STEPHEN KAMAU KINYANJUI.....1<sup>ST</sup> PLAINTIFF**

**SUSAN NJAMBI KAMAU.....2<sup>ND</sup> PLAINTIFF**

*(Suing as legal representatives of the estate of Kamau Gikonyo deceased)*

**=VERSUS=**

**JAMES ESBON MWANGI MAIGUA.....1<sup>ST</sup> DEFENDANT**

**GEORGE AMBOGO MARITA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Applicants are the administrators of the estate of the late Kamau Gikonyo (Deceased). The deceased bought shares at New Roysambu Housing Company Limited pursuant to which he was allocated a plot which is now registered in the name of the 1<sup>st</sup> Defendant/Respondent as LR No. 116/999 (suit property). The 1<sup>st</sup> Defendant/Respondent purchased the suit property from the 2<sup>nd</sup> Defendant/Respondent who purported to have purchased the same from the “administrators” of the estate of the deceased.

2. The Applicants filed a Notice of Motion dated 18<sup>th</sup> October, 2018 in which they seek striking out of the defences filed by the Defendants/Respondents and entry of judgment as per the plaint. The Applicants contend that the defences filed herein do not raise any triable issues and that they should be struck out and judgment entered in favour of the Applicants as per the plaint to save on Court’s time.

3. The 1<sup>st</sup> Defendant/Respondent opposed the Applicants application based on a replying affidavit sworn on 12<sup>th</sup> March, 2019. The 1<sup>st</sup> Respondent further contends that the Court ordered joinder of Roysambu Housing Co-operative Society Limited as third Defendant but the Applicants have not bothered to amend the plaint to include it as a third Defendant.

4. I have considered the Applicants’ application as well as the opposition to the same by the 1<sup>st</sup> Respondent. The only issue for determination is whether the defences filed herein should be struck out. Striking out of a pleading is a drastic action which can only be allowed in a clear case. In the instant case, the 1<sup>st</sup> Respondent contends that he is an innocent purchaser for value and that he should be heard.

5. The 1<sup>st</sup> Respondent purchased the suit property from the 2<sup>nd</sup> Respondent. Though the 2<sup>nd</sup> Respondent has conceded that he purchased the suit property from persons who purported to be administrators of the estate of the deceased, the 1<sup>st</sup> Respondent states in his defence that he was not aware of any defects in the interest he purchased from the 2<sup>nd</sup> Respondent. It is therefore clear that the 1<sup>st</sup> Respondent’s defence raises a triable issue and cannot be struck out. I therefore find no merit in the Applicant’s application which is dismissed with costs to the 1<sup>st</sup> Respondent.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 27<sup>th</sup> day of June, 2019.**

**E.O.OBAGA**

**JUDGE**

Mr. Kangata for Mr. Nyangau for Plaintiff.

M/s Njagi for Mr. Kimathi for 1<sup>st</sup> Defendant.

Court Assistant Hilda.