



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT KISII**

**ENVIRONMENT AND LAND CASE NO. 546 OF 2015**

**KAYUS MOKAYA BABU.....PLAINTIFF**

**VERSUS**

**LAND REGISTRAR KISII.....1<sup>ST</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**CHARLES OMOA KAYUS.....3<sup>RD</sup> DEFENDANT**

**R U L I N G**

1. The Plaintiff filed the present suit vide a plaint dated 9<sup>th</sup> December 2015 seeking inter alia cancellation of title **No. BB/Boburia/5343** which the Plaintiff claimed was obtained fraudulently. The Plaintiff had not enjoined the registered owner of the suit land as a party to the suit. The Plaintiff filed an amended plaint on 15<sup>th</sup> November 2017 enjoining one Charles Omos Kayus as a 3<sup>rd</sup> Defendant. The record does not show that any leave to amend the plaint was either sought or granted.

2. The Attorney General entered appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and filed a defence generally denying the averments contained in the plaint on 22<sup>nd</sup> December 2015. Further on 23<sup>rd</sup> May 2017 the Attorney General gave Notice of Preliminary Objection on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the following grounds:-

**1. The suit herein is statute barred by the provisions of the Public Authorities Limitation Act.**

**2. The suit herein is statute barred by the provisions of the Limitation of Actions Act, Chapter 22, Laws of Kenya, Section 3.**

**3. The suit is res judicata as provided in Section 7 of the Civil Procedure Act, Cap 21 Laws of Kenya.**

**4. The Plaintiff has no locus standi to bring the suit against the Defendants herein.**

3. On 6<sup>th</sup> January 2018 the Court directed that the preliminary objection be argued by way of written submissions. The Attorney General did not file any submissions in support of the preliminary objection inspite of being afforded the time to do so and time being extended severally. The Plaintiff filed his submissions dated 23<sup>rd</sup> April 2019 on 10<sup>th</sup> June 2019 which I have perused and regrettably do not see how they relate to the Preliminary Objection. The Plaintiff's submissions appear to be addressing the merits of the case and not the Preliminary Objection.

4. The Preliminary Objection as laid needed to be substantiated. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not file any submissions which perhaps could have substantiated the Preliminary Objection. The Attorney General had also not filed any bundle of documents which perhaps could have provided a basis for the Preliminary Objection. The grounds relied on in the Preliminary Objection were not pleaded in the defence to afford the Plaintiff an opportunity to reply to the contentions.

5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants gave notification of a Preliminary Objection but when afforded the opportunity to prosecute the same, they shied away with the result that there was no substantiation of the Preliminary Objection and as a consequence the same must fail for want of prosecution. Whereas the Preliminary Objection may have raised pertinent issues, no basis was laid to make a determination of the issues. I will therefore disallow the Preliminary Objection but the disallowance of the Preliminary Objection will not be a bar to the same issues being raised and canvassed during the trial.

6. The Preliminary Objection dated 23<sup>rd</sup> May 2017 is therefore rejected with no orders as to costs.

**RULING DATED, SIGNED AND DELIVERED AT KISII THIS 2<sup>ND</sup> DAY OF AUGUST 2019.**

**J. M. MUTUNGI**

**JUDGE**