



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 103 OF 2019

RAYMOND CHARO

GIDEON KIPTOO.....PLAINTIFFS

VERSUS

TIMOTHY SIMASI

RICHARD WANYONYI

JOHN WYCLIFFE RUTAGYEMWA KASSORA.....DEFENDANTS

RULING

(Application to have suit against 3rd defendant struck out; 3rd defendant was not alive when suit was filed; plaintiffs claiming that defendants have been evicting them from certain land; clear that this cannot be the case, at least as against the 3rd defendant, for he was deceased; suit against 3rd defendant an abuse of the court process and is struck out)

1. The application before me is filed by Musherure Suzanne Kaiinembembasi who seeks orders that the suit against the 3rd defendant be struck out for the reason that the 3rd defendant died on 20 February 1999 and was thus deceased when this suit was filed on 13 June 2019 (correct date being 14 June 2019). The said Ms. Suzanne has deposed in the supporting affidavit that she is the executrix of the estate of the 3rd defendant and has attached a grant of letters of administration issued in the High Court of Uganda at Kampala, in Probate & Administration Cause No. 826 of 1999. I have seen the grant and I note that the applicant is one of the administrators of the estate of the 3rd defendant alongside five others who appear to be her siblings and mother. She has contended in this application that since the suit was commenced against a deceased person, the said suit is a nullity *ab initio*.

2. The suit was certainly commenced through a plaint which was filed on 14 June 2019. The plaintiffs averred in the plaint that they have been staying in the Plots Nos. MN/I/15099 and MN/I/1108 in Shanzu, since the year 1982. They averred that the defendants with the assistance of police officers have been demolishing their houses and illegally threatening to evict them. They sought orders that the defendants be permanently restrained from demolishing their houses or evicting them.

3. This application was served upon the plaintiff's counsel but there is no reply to it and it is thus unopposed.

4. I have considered the application. The claim of the plaintiffs is that the three named defendants, including the deceased 3rd defendant, are demolishing their houses and threatening to evict them. Clearly, this cannot be the case, at least in so far as the 3rd defendant is concerned, because the 3rd defendant died in the year 1999 and he could not have been available in the year 2019 to threaten the plaintiffs with eviction. If I was persuaded that the plaintiffs have presented a cause of action that could have been sustained against the estate of the deceased, I would probably have directed that the applicant be substituted for the deceased 3rd defendant, but the suit of the plaintiffs is specifically against individuals as it is claimed that the said persons have personally threatened them with eviction.

5. I am thus persuaded that this application is merited for it is clear to me that the suit against the 3rd defendant is an abuse of the court process. I thus allow the application and order the name of the 3rd defendant struck out from these proceedings. The plaintiffs will pay the applicant the costs of this application.

6. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 7TH DAY OF NOVEMBER 2019.

MUNYAO SILA,

JUDGE.

IN THE PRESENCE OF:

Mr. Adede holding brief for Mr Malombo for the applicant.

No appearance on the part of M/s Angelo Owino & Company for the plaintiffs.

Court assisntat; David Koitamet.