



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

LAND CASE NO. 297 OF 2016

1. NURU OMAR MAHENDAN.....1ST PLAINTIFF

2. MARIAM OMAR MAHENDAN.....2ND PLAINTIFF

3. ANZUN OMAR MAHENDAN.....3RD PLAINTIFF

4. MALKIA OMAR MAHENDAN.....4TH PLAINTIFF

VERSUS

1. AHMED MOHAMED HONEY.....1ST DEFENDANT

2. FARIDA OMAR MAHENDAN.....2ND DEFENDANT

3. FERRUZ OMAR MAGHRAM.....3RD DEFENDANT

RULING

1. By an Amended Complaint dated and filed herein on 17th November 2016, the four Plaintiffs Nuru Omar Mahendan, Mariam Omar Mahendan, Anzun Omar Mahendan and Malkia Omar Mahendan have brought this suit against the three Defendants asking to be granted the following prayers:-

a. A declaration that the Plaintiffs are entitled to accounts on the proceeds from all that house on Plot No. 1343 Malindi from the date Batuli Omar Mahendan died till the date of Judgment.

b. Distribution of all revenue collected from the house on Plot Number 1343 Malindi from the date Batuli Omar Mahenda died till the date of Judgment amongst all the identified heirs.

2. Upon being served with the Summons, and in response to the suit, the defendants Ahmed Mohamed Honey Thani, Fariki Omar Mohamed and Ferruz Omar Maghram have on 6th February 2017 filed a Notice of Preliminary Objection to the suit on the grounds that:

i) The Court has no jurisdiction to entertain this matter;

ii) The Plaintiffs have no locus standi;and

iii) The matter is res judicata.

3. I have considered the Preliminary Objection and the Plaintiff's response thereto. I have equally taken into account the oral submissions made before me by the respective Learned Advocates for the parties.

4. The reason the Plaintiffs have brought this matter to Court can be discerned from a perusal of the pleadings at paragraphs 5, 6, 9 and 10 of the Complaint. For their full tenor and purport, I hereby reproduce them here as they appear in the Complaint.

“5. At all material times to this suit, the Plaintiffs were sister-in-law to the 1st and 3rd Defendants through their late sister one Batuli Omar Mahendan and Swaleh Omar Mahendan who are now deceased.

6. On or about 22nd day of March 1999, the late Batuli Omar Mahendan bought a plot known as Plot No. 1243 measuring 0.0469 acres with all improvements thereon.

7.

8.

9. The 1st Defendant filed a Succession Cause in the Kadhi's Court in Malindi being Malindi Kadhi's Court Succession No. 87 of 2008 where the heirs of the late Batuli Omar Mahendan were identified (as follows)....

10. The Plaintiffs aver that as heirs of the Estate of Batuli Omar Mahendan, they are entitled to the proceeds of the suit property which is currently under the care of the Defendants as trustees of all other heirs.

5. Arising from the foregoing, and upon a perusal of the record, it is evident to me that the Plaintiffs and the Defendants were previously engaged in Malindi Kadhi's Court Succession Cause No. 87 of 2008. It is clear from a perusal of the record that the decision of the Honourable Kadhi was rendered on 26th February 2010.

6. It is further evident that the four Plaintiffs together with the current 3rd Defendant Ferruz Omar Mahendan were not satisfied with the decision of the Kadhi and on 31st February 2011, they lodged an appeal at the High Court at Malindi and sought to stay the Kadhi's decision. The Respondent in the High Court was Ahmed Mohamed Honey, the 1st Defendant herein. On 20th June 2014, the High Court dismissed the appeal after the Appellants failed to prosecute it.

7. Further dissatisfied by the decision of the High Court, the Appellants moved to the Court of Appeal where they filed Malindi Civil Appeal No. 58 of 2015. Having heard arguments from both sides, the Learned Judges of Appeal on 22nd April 2016 delivered themselves as follows:-

“In the end, we are satisfied just like the High Court that the appellant's conduct was underserving of the Court's mercy and was deliberately calculated to deny the respondent the fruits of his victory over them. We accordingly dismiss this appeal with costs to the Respondent.”

8. From the pleadings before me, what this Court is being told is that the shares due to the beneficiaries of the estate of the said Batuli Omar Mahendan had not been identified as matters regarding the parcel of land identified as Plot No. 1343 had not been dealt with. That indeed appears to be the case as at paragraph 13 of the Amended Plaint, the Plaintiffs implore this Court to have the Defendants account for money collected as rent from the said Plot and thereafter to act as follows:-

“13. Upon accounts, the said monies be distributed among all heirs in the formula laid by the Kadhi.”

9. By all standards, this Court has no jurisdiction to delve into matters of distribution of the estate of a deceased person and this suit as filed is clearly misconceived. In my view, if there was discovery of such an important matter, nothing would have been easier for the Plaintiffs herein to go back before the Kadhi or the High Court to which they moved on appeal to re-open the matter and have the estate redistributed in accordance with the laws of succession.

10. A perusal of the Kadhi's Judgment dated 26th February 2016 however reveals the reason the Plaintiffs have chosen instead to come to this Court. From the said decision, it is clear that the matter of Plot No. 1343 was canvassed before the Kadhi before he made his decision. The Plaintiff's cross -petition was dismissed in that Judgment and their decision to file a fresh suit in this Court purporting to deal solely with the issue of Plot No. 1343 is mischievous and meant to abuse the process of this Court.

11. I will not allow them to do so. Accordingly, I find merit in the Preliminary Objection. This suit is therefore dismissed with costs to the Defendants.

Dated, signed and delivered at Malindi this 15th day of March, 2018.

J.O. OLOLA

JUDGE