



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 247 OF 2012

MUTUKU MAITHYA1ST PLAINTIFF

MUTISYA MAITHYA2ND PLAINTIFF

MUTUA MAITHYA3RD PLAINTIFF

MUSYOKA MAITHYA4TH PLAINTIFF

VERSUS

NGILA MAITHYA1ST DEFENDANT

MUINDI MAITHYA2ND DEFENDANT

MUTISO MAITHYA3RD DEFENDANT

THE DISTRICT LAND ADJUDICATION AND

SETTLEMENT OFFICER, MKS.....4TH DEFENDANT

THE DISTRICT LAND REGISTRAR, MKS.....5TH DEFENDANT

THE ATTORNEY GENERAL6TH DEFENDANT

RULING

1. In the Application dated 10th October, 2016, the Plaintiffs are seeking for the following orders:

a. That this Honourable Court be pleased to reinstate this suit and hear the same on its merits.

b. That the names of the 1st, 2nd and 3rd Defendants be struck off the suit and replaced with Kamene Mutiso, Kanini Muindi (the 1st and 2nd Interested Parties) and one Mutua Ngila.

2. The Application is premised on the grounds that this suit was wrongfully earmarked for dismissal as there had been activity on the file prior to the dismissal of the suit; that the Plaintiffs herein were not represented and that the Notice to show cause why the suit should not be dismissed for want of prosecution was served on the Plaintiffs' former advocates.

3. It is the Plaintiffs' case that as a consequence of non-representation, the suit was dismissed.

4. The 4th, 5th and 6th Defendants' counsel filed a Notice of Preliminary Objection in which he averred that the suit was a non-starter because it was filed against persons who were already dead and that the suit does not disclose any cause of action as against the 4th, 5th and 6th Defendants.

5. The 1st -3rd Defendants did not file any response.

6. I have gone through the record and I have not seen an order dismissing the suit for want of prosecution. The issue of reinstating the suit does not therefore arise.

7. Although the Plaintiffs are seeking for the striking out of the 1st, 2nd and 3rd Defendants and their names replaced with the 1st, 2nd and 3rd Interested Parties because the said Defendants are deceased, the Plaintiffs have not informed this court when the said Defendants died, and whether the 1st, 2nd and 3rd Interested Parties are their legal representatives.

8. If indeed the said Defendants died before the suit was filed, then the suit will be a non-starter against those Defendants and who cannot be replaced by the Interested Parties.

9. I say so because a party cannot sue a deceased Defendant and thereafter seek to replace him with another party. A suit filed against a deceased party can only be dismissed or withdrawn as against that party.

10. For those reasons, I dismiss the Application dated 10th October, 2016 with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF MARCH, 2018.

O.A. ANGOTE

JUDGE