



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 4 OF 2017

FRANCIS KIHORO MAINA.....1ST PLAINTIFF

FRANCIS GICHUHI KAMAU MAINA.....2ND PLAINTIFF

PETER MAINGI MAINA (Suing as the administrators

of the estate of the late ESTON

MAINA KIMERE).....3RD PLAINTIFF

VS

HANNAH WANJIRU MAINA.....DEFENDANT

RULING

1. The Plaintiff/Applicant on 23/01/2018 filed a notice of motion under certificate of urgency together with a plaint both dated 22/01/2018 in which the Defendant/Respondent was named as Hannah Wanjiru Maina. The summons were then served on a Damaris Wanjiru Maina who was not a party to the suit then.

2. The firm of M/s Muchiri Wa Gathoni & Company Advocates entered appearance under protest on 05/02/2018 on behalf of Damaris Wanjiru Maina and with a Notice of Preliminary Objection to the plaint and Notice of Motion seeking for the same to be struck out with costs premised on the following grounds:

a) That both suit and the application offered the mandatory provisions of Law that the Defendant/Respondent is a deceased person as is clearly reflected in the Plaintiff's pleadings and as such the same is a non-starter incurably 'Bad in law and an abuse of Court process.

b) That the suit and application are scandalous frivolous or vexatious in that orders are sought against Damaris Wanjiru Maina who is not a party to the suit.

c) That the suit is incompetent as it is and therefore incapable of being defended as filed.

3. The matter came up for mention on 06/02/2018 when the Advocate for the Defendant/Respondent informed the Court that they had filed a Preliminary Objection on grounds that the party sued was deceased while orders had been sought against his client Damaris Wanjiru Maina. Parties were then directed to file written submissions in relation to the Preliminary Objection.

4. The Advocates for the Defendant Respondent/filed written submissions on 12/02/2018. The Plaintiff/Applicant later filed an amended plaint and Notice of motion on 19/02/2018 amending the name of the Defendant/Respondent to read Damaris Wanjiru Maina and served the same to the Defendant/Respondent together with a mention Notice.

5. When the matter came up for further mention to confirm filing of written submissions to the Preliminary Objection the Learned Counsel for the Plaintiff informed the Court that he has since filed an amended plaint correcting the name of the Defendant/Respondent to read Damaris Wanjiru Maina and that the same was done without the leave of the Court as the pleadings had not closed as per Order 8 rule 1. He submitted that the error in the names was a mistake as both parties to the suit are relatives. That since the Preliminary Objection was mainly relating to the deceased Defendant there was no need to revisit the same as the amendment has already been done.

6. The Learned Counsel for the Defendant/Respondent in support of the Preliminary Objection informed the Court that Damaris Wanjiru Maina is the administratrix of her deceased grandmother Hannah Wanjiru Maina's estate. He opposed the admission of the amended

pleadings as they had been filed way after parties had filed written submissions to the Preliminary Objection. He also raised issues with the service of the amended pleadings and further that they had not been signed.

7. The issue for determination is therefore whether the amendments done to the pleadings by the Plaintiff were within the law and whether the Preliminary Objection is merited.

8. The Plaintiff filed a suit against Hannah Wanjiru Maina deceased. The suit together with the application filed on 23/1/18 were duly served on Damaris Wanjiru Maina who raised a Preliminary Objection dated 5/2/18.

9. Before the close of pleadings the Plaintiff filed and served the amended pleadings and Notice of Motion under order 8 rule 1 amending the plaint to read Damaris Wanjiru Maina, a living person and the administratrix of the estate of Hannah Wanjiru Maina

10. The Counsel for the Plaintiff explained that the earlier suit against Hannah Wanjiru Maina was an error which has now been corrected by the amendment on record. I have considered the submission/argument of the Learned Counsel for the Defendant who insists that the Court must determine the preliminary order. He also acknowledges confirms that Hannah Wanjiru Maina is deceased and the Defendant, Damaris Wanjiru Maina is the administratrix of the estate of Hannah Wanjiru Maina. He also raised other issues relating to the plaint on record which I will not dwell on at this stage.

11. In the circumstances, I consider the amendments were made within the law to cure the error explained by the Plaintiff. The question that might be asked is who raised the preliminary order? Was there a party called Damaris W Maina (at that stage) for purposes of raising the preliminary order? To my mind, there was none.

12. I find that the Preliminary Objection is spent given the two reasons advanced above and it will be an exercise in futility to so determine the same. It would also appear that the Plaintiff has abandoned the pleadings for which the preliminary order is raised.

13. There are no orders as to costs.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 16TH DAY OF APRIL 2018.

J G KEMEI

JUDGE