



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**SUIT NO 193 OF 2017**

**RASHID MASUDI NASORO.....APPLICANT**

**VERSUS**

**FATUMA R. SEBE.....1<sup>ST</sup> RESPONDENT**

**SALIM JUMA MWABASHO.....2<sup>ND</sup> RESPONDENT**

**THE DIANI OASIS LIMITED.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 30<sup>th</sup> November, 2017. It is brought under Section 1A, 3A, 63(e) of the Civil Procedure Act, Order 1 Rule 2, Order 2 Rule 15 of the Civil Procedure Rules and all enabling provisions of the law.
2. It seeks orders;
  - a. That the Honourable Court be pleased to strike out the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants from these proceedings.
  - b. That the Honourable Court be pleased to strike out the entire suit herein with costs.
3. The grounds are on the face of the application and are listed as in paragraph 1-9. I do not need to reproduce them here.
4. The application is supported by the affidavit of Salim Juma Mwabasho, the 2<sup>nd</sup> Defendant/Applicant herein sworn on the 30<sup>th</sup> November, 2017.
5. The application is opposed. There is a replying affidavit sworn by Rashid Masudi Nasoro, the Plaintiff/Respondent sworn on the 16<sup>th</sup> January, 2018.
6. The 3<sup>rd</sup> Defendant has also raised a preliminary objection dated 12<sup>th</sup> December, 2017. The grounds of the preliminary objection are that the Plaintiff has not exhibited letters of administration for the estate of the said Masudi Nasoro Ganzori and as such the suit ought to be struck out with costs.
7. It was directed by the court that the same be canvassed together with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants notice of motion.
8. It is the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants case that the Plaintiffs claim is that he and his siblings inherited the land from their late father. That he has not exhibited any letters of administration to show that he is the administrator of the estate of his late father.
9. It is the 3<sup>rd</sup> Defendant's case that this suit is fatally defective as the Plaintiff has not exhibited letters of administration that the Plaintiff lacks Locus standi to institute this suit. They also support the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's application.
10. I have considered the Notice of Motion and the supporting affidavit. I have also considered the preliminary objection, the replying affidavit and the oral submissions of counsels. The issue for determination is whether the suit herein ought to be struck out.

11. I have gone through the pliant. It is not in doubt that the Plaintiff has not exhibited letters of administration to show that he is the legal representative of the estate of the late Masudi Nasoro Ganzori, who was his father.

12. He has annexed as, "RM2 A" the judgement from Land Disputes Tribunal Msambweni. The judgment is dated 25<sup>th</sup> October, 2008. The same was adopted as judgement of the court by Honourable A. Obura, Principal Magistrate, Kwale Law Courts.

13. He has also annexed as "RMN 4" which is a letter from the then Provincial Commissioner confirming that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had filed an appeal against the said findings of 25<sup>th</sup> October, 2008. The said appeal was later withdrawn. In essence the findings of the Land Disputes Tribunal Msambweni and adopted as judgement of the court in Kwale has never been appealed against and or reviewed.

14. Article 159(2) (d) states;

a. ".....

b. ....

c. ....

**d. Justice shall be administered without undue regard to procedural technicalities;**

e. ...."

I am guided by the above provision in finding that the Plaintiff ought to be given an opportunity to ventilate his claim to conclusion.

15. I find it fair and just to give the parties an opportunity to adduce evidence in support of their respective claims so that the dispute can be solved once and for all.

16. I have considered the circumstances of this case and find that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants application dated 30<sup>th</sup> November, 2017 and the preliminary objection lack merit and they are dismissed.

The Plaintiff is encouraged to ensure that this matter is heard expeditiously to avoid causing of injustice or hardship to any party.

The costs do abide the outcome of the main suit.

**It is ordered.**

**Dated, Signed and Delivered at Mombasa on the 17<sup>th</sup> day of April 2018.**

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**L. KOMINGOI**

**JUDGE**

**17/4/2018.**