

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC 210 OF 2017

IBRAHIM MUSA MOHAMED.....PLAINTIFF

-VS-

AMINA HASSAN SULEIMAN AND 6 OTHERS.....DEFENDANTS

RULING

1. The Notice of Motion Application before Court is dated 8th December 2017. The Application seeks primary orders of site visit of the Suit Premises by this Court. The Application is supported by the Affidavit of Ibrahim Musa Mohamed sworn on 8th December 2017 and is premised upon the grounds set out therein, among them that the visit will give the Court opportunity to appreciate the issue in controversy and may fast track the matter or be persuaded to grant interim orders which may ameliorate the situation on the ground.

2. The Application is opposed by the 2nd, 3rd and 4th Defendants who filed grounds of opposition dated 5th April 2018. It is their contention that the Application and the entire suit cannot proceed until the Plaintiff substitutes the 1st, 5th and 6th Defendants who are deceased and that the Plaintiff has neither laid any basis and/or exhibited any evidence in support of the site visit and the manner which it shall be conducted. They further contend that there is no surveyor appointed or a current survey map exhibited to guide the process. It is also their contention that the issue in controversy is about access roads to several plots in Kwale and identification of a road through the said plots is mandate which lies with a government surveyor, and the application lacks merit, is frivolous, vexatious and abuse of the court process. They therefore urged the court to have the application dismissed with costs to the defendant.

3. I have carefully considered the Application and submissions. While I agree that there is need of an expert such as a surveyor to visit such site and file a report, I still believe that since the court is not an expert in the matter, the court's lay observation of the site would help the Court to better understand the dispute. Secondly, the Applicant is the owner of the case at hand, and to the extent judicially possible, the Court would grant his wish for the Court to visit the site. I do not think that the site visit is abuse of the Court Process. Neither is it a waste or imprudent use of judicial time. To grant this Application would to the contrary allow the parties to move faster in the suit. As regards the parties who are deceased, this court is of the view that it is up to Plaintiff to decide how he wants to do with the case against them.

4. Accordingly, I allow the Application with costs in the cause.

5. I direct that the said site visit be arranged by the parties and should be effected within the shortest time possible on a date suitable to all the parties and the Court as time is of essence.

It is so ordered.

Ruling dated, signed and delivered at Mombasa this 25th day of July 2018.

C. YANO

JUDGE