



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC NO. 130 OF 2017**

**RASHID RIZIKI ALI.....PLAINTIFF**

**VERSUS**

**MABIRIKANI RESIDENTS COMMITTEE**

**MABIRIKANI UPGRADING RESIDENTS COMMITTEE.....DEFENDANTS**

**JUDGMENT**

1. The suit before me was initially filed on 10<sup>th</sup> November 2015 before the Kilifi Senior Principal Magistrates Court. It was transferred to this Court following the Plaintiff's application made vide Malindi ELC Miscellaneous Application No. 12 of 2017 on 25<sup>th</sup> April 2017.

2. The Plaintiff Rashid Riziki Ali prays for an order to compel the two Defendants herein to release the squatters survey fees from the Bank. The Plaintiff's Prayer is informed by his contention that at all times material, both the Plaintiff and the Defendants were squatters residing at Mabirikani Village in Kilifi County. The Plaintiff accuses the two Defendants named herein as Mabirikani Resident Committee(1<sup>st</sup> Defendant) and Mabirikani Upgrading Residents Committee(2<sup>nd</sup> Defendant) of engaging in Court wrangles for over one year which wrangles led to the freezing of the 1<sup>st</sup> Defendant's Kenya Commercial Bank Account following instructions of the District Social Development Officer.

3. The Plaintiff further accuses the two Defendants of failing to co-operate in securing title deeds by the squatters despite the efforts of a Senior Administrative Officer who called upon the two to co-operate.

4. The 1<sup>st</sup> Defendant through one Wellington Deche Nyale who describes himself as the first procedurally elected Chairman of the Committee did file on 8<sup>th</sup> September 2017 a document described as the "First Defendant's Statement." The 2<sup>nd</sup> Defendant did not file any document.

5. I have taken time to consider the statements, documents and pleadings filed before me. It is apparent from the same that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are welfare societies or organisations registered under the Social Services Department, Kilifi solely for the purposes of helping the membership in acquiring and owning property.

6. In this regard, I am aware that the Societies Act does not contain provisions with regard to the presentation and prosecution of suits by or against unincorporated societies. That being the case, it would appear that the Legislature did not intend that suits be brought by or against those societies in their own names(see *Trustees Kenya Redeemed Church & Another –vs- Samuel M. Obuya & 5 Others (2011)eKLR*).

7. In light of the above, it is evident to me that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have no capacity to sue or be sued. They can only be sued in the names of their officials against whom summons can then issue. Whereas the Court may not strike out a pleading on the basis of non joinder or misjoinder of parties, it cannot ignore the fact that the parties who are enjoined in any suit must be legal persons with capacity to sue or to be sued.

8. In the circumstances it is my view that the suit before me is not properly before this Court. The same is struck out but with no order as to costs.

**Dated, signed and delivered at Malindi this 28<sup>th</sup> day of September, 2018.**

**J.O. OLOLA**

**JUDGE**