



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO.318 OF 2017

SYOKIMAU MAVOKO COMMUNITY ASSOCIATION (*Suing through its official*

PIUS MUSEMBI (*Chairman*).....**1ST PLAINTIFF**

MAVOKO SLUMS UPGRADING SELF HELP GROUP (*Suing through its official*

BENEDICT MUIMI (*Chairman*).....**2ND PLAINTIFF**

VERSUS

FRANCIS KOOME**1ST DEFENDANT**

PETER MWITUI.....**2ND DEFENDANT**

FRANCIS KIMATHI.....**3RD DEFENDANT**

IGAINYA LIMITED.....**4TH DEFENDANT**

RULING

1. In the Application dated 19th September, 2017, the 4th Defendant is seeking for the following orders:

a. The Complaint filed herein on 19th July, 2017 and dated the same date be struck out as the same is frivolous and vexatious and is otherwise an abuse of the process of the court.

b. Cost of this Application be provided for.

2. The Application is premised on the grounds that the Plaintiffs did not file a list of documents as at the time of filing the Complaint; that although in their Verifying Affidavits, Benedict Muimi and Pius Musembi claim to have been given authority to swear them, they have neglected or failed to annex the said authorities and that the persons filing the Complaint have not shown that they are the registered officials of the Societies they claim to represent.

3. The 4th Defendant has further averred that the Plaintiff has failed to serve it with the pleadings in this matter and that the names of the persons through whom the Plaintiffs claim to be suing do not appear in the list of the names filed in the Application dated 19th July, 2017.

4. In reply, the Chairman of the Plaintiff deponed that when their advocate filed the Complaint, he inadvertently failed to file the witness statements and the list of documents; that they have since filed the witness statements and the list of documents; that the 4th Defendant's former advocate was served with all the pleadings and that this matter should be heard on merit and not on procedural technicalities.

5. The parties filed their respective submissions and list of authorities which I have considered.

6. This suit was commenced by way of a Complaint dated 19th July, 2017. On the Complaint, the Verifying Affidavits of the two officials of the Plaintiff was attached. In the Verifying Affidavits, the Plaintiff's officials deponed that they have been authorized by the Plaintiff's members to swear those Affidavits on their behalf.

7. Although the physical letters of authority authorizing the Plaintiff's officials to file the suit were not filed alongside the Complaint, I did not see the prejudice that the omission will cause the Defendants. In any event, the deponents of the Verifying Affidavits have stated that they are the

officials of the Plaintiff, a registered Association and self help group. It is therefore sufficient, in case of a registered Association or a self help group, for its officials to verify the Plaintiff, without obtaining the authority of all the members.

8. The Plaintiff's officials have deposed that the failure to file a list of witnesses and document alongside the Plaintiff was an inadvertent mistake on the part of their advocate. They have since filed the list of witnesses and documents.

9. This matter has not gone for pre-trial directions. Indeed, a case conference pursuant to the provisions of Order 11 has not been undertaken. In my view, a party who has not filed its documents and list of witness alongside his Plaintiff or Defence can do so before the pre-trial directions are undertaken. This is more so in cases where parties file matters under Certificates of Urgency and inadvertently do not file their documents and statements alongside their pleadings.

10. It is trite law that striking out a suit is a draconian measure that should be undertaken in the rarest of cases. Where a party shows that he is ready to correct a procedural lapse like the filing of a pleading out of time, the court should, where no prejudice will be occasioned to the opposite party, allow the party to file the pleading.

11. In the circumstances, I find that the failure by the Plaintiffs to file the documents and witness statements alongside the Plaintiff has not occasioned any prejudice to the Defendants. For those reasons, I dismiss the Application dated 19th September, 2017 but with no order as to costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21ST DAY OF SEPTEMBER, 2018.

O.A. ANGOTE

JUDGE