



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
CIVIL SUIT NO. 3 OF 1988

JOSEPH MUTISO MAUKI.....PLAINTIFF

VERSUS

MUNICIPAL COUNCIL MACHAKOS.....1ST DEFENDANT

MAJOR PETER MUIA MASILA.....2ND DEFENDANT

ANIEL MBUVI NGUSU.....3RD DEFENDANT

WILSON MASILA MUEMA.....4TH DEFENDANT

MAJOR NDUNDA MUYANGA.....5TH DEFENDANT

BENNET KENYA MBUVI.....6TH DEFENDANT

DANIEL NGEWA MUASA.....7TH DEFENDANT

GENERAL JACKSON KIMEU MULINGE.....8TH DEFENDANT

RULING

1. This Ruling is in respect to the Notice of Preliminary Objection filed by the 4th and 8th Defendants dated 3rd December, 2011 and the 1st Defendant's Preliminary Objection dated 16th January, 2012.
2. In the Preliminary Objection, the Applicants have averred that the Plaintiff does not have a justifiable cause of action against the 4th and 8th Defendants as depicted in the amended Plaint filed on 22nd July, 2011.
3. According to the 4th and 8th Defendant's, the suit does not disclose a reasonable cause of action; that the Plaintiff has not described the suit property; that the Plaintiff's claim is time barred and that the Plaintiff lacks capacity to file the suit in person.
4. In his submissions, the Applicant's advocate submitted that this suit was filed on 14th January, 1988 whereas the cause of action is alleged to have happened in 1968; that the suit property has not been described and that the Plaintiff lacks *locus standi* having obtained the letters of administration in the year

2006.

5. Counsel submitted that in any event, the suit is *res judicata*, a similar matter having been filed in Machakos Resident Magistrate's Court Case No. 6 of 1980.

6. In his submissions, the 1st Defendant supported the Applicant's Preliminary Objection.

7. The Plaintiff, who is acting in person, filed three (3) sets of submissions in which he lamented on how the Defendants are bent in delaying the finalization of this matter.

8. The Plaintiff did not specifically respond to the four (4) legal issues that have been raised in the Preliminary Objections: Whether the suit raises a cause of action as against the Applicants; whether the suit is time barred; whether the Plaintiff has the *locus standi* to institute the suit and whether the suit is *res judicata* in view of the existence Machakos RMCC No. 6 of 1980.

9. This must be one of the oldest suits that are pending for hearing in this court.

10. Indeed, considering that the matter was filed 29 years ago, it defies any description that can be assigned to the cherished doctrine of a fair hearing.

11. The record shows that this matter was partly heard by Lenaola J. (*as he was then*) on 16th September, 2009.

12. In my view, the current notices of Preliminary Objections should have been filed and argued before the hearing commenced.

13. The Plaintiff having testified, it is only proper that the legal issues raised by the Defendants be taken up during the hearing of the suit.

14. I say so because some of the legal issues that have been raised by the Defendants arose out of the testimony of the Plaintiff. That being the case, the Defendants should hold their horses and raise those issues during the trial and in their final submissions.

15. For those reasons, I will not delve into the merits of the issues that have been raised in the Notices of Preliminary Objection.

16. The Notices of Preliminary Objection dated 3rd December, 2011 and 16th January, 2012 are struck out with no order as to costs.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017

OSCAR A. ANGOTE

JUDGE