



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA

CIVIL SUIT NO 155 OF 2006 (OS)

ALI MOHAMMED ALI MWINZANGU.....PLAINTIFF/APPLICANT

AND

1. KAINGU MANGI

2. SAFARI KAHINDI

3. ADULRAMAN ALIAS AMIGO

4. SHABAN

5. MOHAMMED

6. OMAR & OTHERS.....RESPONDENTS/DEFENDANTS

RULING

1. This is the chamber summons dated 31st august 2016. It is brought under Order 1, Rule 10 (1)(2) Order 2 Rule 15, Order 45 Rule 1, 3 (2) of the Civil Procedure Rules Section 1A, 1B 3A and 80 of the Civil Procedure Act Articles 50, 159 of the constitution of Kenya and all other enabling provisions of Law.

2. It seeks orders that;

1. Spent

2. This Honourable Court grant leave to the applicant Hassan Abdulkadir Aziz to be joined in this suit as an interested party.

3. This Honourable Court do stay the execution of the judgment and/or decrees given by the court on 18th December 2009 and/or the proceedings herein pending the hearing and determination of this application.

4. This Honourable Court do set aside its judgment and/or decree given on 18th December 2009.

5. The plaintiff/respondent do pay costs of the application.

3. The grounds relied upon are that the plaintiff/respondent obtained the said judgment and/or decree claiming that he was a holder of a grant in the estate of Ahmed Mohammed Nassib. That the court's *ex parte* judgment of 18th December 2009 was obtained on the basis of non-disclosure of material facts and thus it was obtained by fraud and falsehood. The application is supported by the affidavit of Hassan Adbulkadir Aziz the applicant herein sworn on the 31st August 2016.

4. The application is opposed. There are grounds of opposition filed by the plaintiff's counsel and dated 15th November 2016 filed in court on the 17th November 2016.

5. On 6th December 2016 it was agreed between the plaintiffs' counsel and that of the applicant that written submissions be filed in respect of the application. By 28th February 2017 the plaintiff/respondent had not filed their submissions and a set was set for ruling. I will however consider the grounds of opposition on record.

6. It is the applicant's contention that the plaintiff/respondent presented himself as the administrator of the estate and obtained the *ex parte* judgment herein. That under Order 2 Rule 15 of the Civil Procedures the court ought to set aside the judgment herein and strike out the suit.

7. It is the plaintiff's/respondent's contention that the suit herein was against the defendant/judgment debtors' who are trespassers' on the plot and not the deceased father to the applicant.

8. I have considered the chambers summons and the supporting affidavit. I have also considered the grounds for opposition. The issue for determination is whether the applicant has satisfied the court that he ought to be enjoined in this suit as an interested party.

9. The applicant relies on order 1 Rule 10 of the Civil Procedure rules. I have gone through this provision and find that the applicant has not met any conditions set down. The suit then was against the defendant who are trespassers to the suit property. Judgment was entered on 18th December 2009. The same is more than seven years old.

I agree with the plaintiff's counsel that this suit was not between the plaintiff and the applicant's deceased father.

10. I have gone through order 45 Rule 1, 3 (2) of the Civil Procedure Rules. Order 45 Rule 1 reads;

i. " any person considering himself aggrieved –

a. By a decree or order from which an appeal is allowed but from which no appeal has been preferred; or

b. By a decree or order from which no appeal is hereby allowed,

And who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made or on account of some mistake or error apparent on the face of record or for any other sufficient reason desires to obtain a review of the decree or order may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay sub-rule (2) refers to a person who is already a party to the proceedings."

11. I find that the applicant herein has failed to demonstrate to the court that there are sufficient reasons to review the judgment dated 18th December 2009. He also relies on order 2 rule 15 of the Civil Procedure rules which state; sub-rule II "at any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that-

a. It declines no reasonable cause of action or defence in law or

b. It is scandalous, frivolous or vexatious ; or

c. It may prejudice embarrass or delay the fair trial of the action or

d. It is otherwise an abuse of the process of court and may order the suit to be stayed or dismissed or judgment be entered accordingly as the case may be.”

12. I find that this does not apply in the instant application as the judgment has already been delivered and no appeal was preferred against it. This application has been brought after a long delay.

13. All in all I find that it is not in the interest of justice or the applicant to be joined in this suit as the same has been finalized. Nothing prevents the applicant from instituting a suit against the plaintiff/respondent. A court of competent jurisdiction will determine it on its merits.. I find the present application to be an abuse of the court process and the same is dismissed. I make no order as to costs.

Dated and signed on the 29th day of June 2017 at Mombasa.

L. KOMINGOI

JUDGE

29/6/17

Ruling dated and delivered in open court on the 29th day of June 2017 in the absence of parties duly informed.

L. KOMINGOI

JUDGE

29/6/17