



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC 51 OF 2017

ROBERT MULI MATOLO.....PLAINTIFF/APPLICANT

VERSUS

THE ATTORNEY GENERAL

PETREER NZESYA MAITHYA

KIMEU MAITHYA

ROBERT MUTHIANI VULI.....DEFENDANTS/RESPONDENTS

RULING

1. On the **20th March 2014**, **Peter Nzesya Maitha** alias **Kimeu Maithya** and **Robert Muthiani Muli** (hereafter referred to as the **2nd** and **3rd** Defendants) filed a notice of preliminary objection against the plaintiff's suit, the objection being dated **10th March, 2014**.

2. The ground of preliminary objection are :-

1) The plaintiff has no locus standi to file the suit in respect of the Estate of Moki Matolo neither is he having letters of Administration of the Estate of the late Isika Matolo, Wallace Matolo and Kivanga Matolo.

2) The suit is time barred since the cause of action is alleged to have taken place in 1976 which is 36 years ago

3) The suit is res judica because High Civil Case no. 599 of 2013 which was decided on 21/2/2014 was on the same subject matter, same parties and the same issues.

4) There is no consent of the Land Adjudication Officer as provided by section 30 of the Land Adjudication Act to give the Court Jurisdiction to hear the suit if what the Plaintiff states is correct that there is still a pending Appeal before the Minister of Lands which the Plaintiff is not a party.

5) The suit was filed after the Plaintiff filed MACHAKOS HCC APP. NO. 193 OF 2012 which was given HCC No. 599 of 2013 which was decided on 21/2/2014 determining all the issues raised here and between the same parties.

6) The plaintiff is a busy body who should not be complaining on behalf of the Estate of Moki Matolo who have no complaint all.

7) The defendant state that all the issues raised were exhaustively dealt with in 1976 through the Land Adjudication process and the same issues cannot be opened after a period of 36 years by the Plaintiff who is a busy body and this is an abuse of the Court Process.

8) The suit should be dismissed at this stage with costs.

3. On the **19th March 2015** the counsel for the **2nd** and the **3rd** defendants appeared before the court and were directed to canvas the preliminary objection by way of written submissions. There was no appearance for the plaintiff and the **1st** defendant when the directions were issued. However the **2nd** and the **3rd** defendants were directed to serve their submissions upon the plaintiff and the **1st** defendant within **14 days** from **19th March, 2015** whereupon the two would also be required to file and serve their submissions within **14 days** after service. The defendants did not file their submissions. The plaintiff filed his submissions on the **3rd October, 2017** and on the same date **Mr. Masika** for the **2nd** and the **3rd** defendants told the court that the two defendants would not file theirs. They however supplied the court with the

ruling in **ELC number 599 of 2013**.

4. The plaintiff's counsel cited the case of ***Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors*[1969] BA 696** and submitted that objection does not raise points of law and should therefore be dismissed.

5. Regarding the issue of locus standi the plaintiff's counsel referred the court to the plaintiff's list of documents filed in court on **22nd February, 2013 paragraph (j)** that shows letters of administration that were issued by the High Court at **Machakos** on the **29th July, 2008**.

6. On the issues of the suit being barred on account of the cause of action having been alleged to have occurred in **1976**, the plaintiff's counsel submitted that there is an appeal pending before the minister which deals with land parcel number **Makueni/Kivani/1000** and as such an issue awaiting determination cannot be time barred.

7. Regarding the **2nd** and **3rd** Respondents' contention that this suit is res judicata on account of **ELC no. 599 of 2013**, the plaintiff's counsel submitted that not all the issues raised in this matter were issues in the **ELC 599 of 2013** and besides the parties in the latter suit were different from the parties herein. The counsel added that **ELC 599/13** is still awaiting determination.

8. And on the issue of whether or not the plaintiff ought to have obtained consent from the Land Adjudication Officer as is provided by **section 30** of the Land Adjudication Act in order to confer jurisdiction to the court to hear the suit if what that plaintiff states is correct that there is still a pending appeal before the minister where the plaintiff is not a party, the plaintiff's counsel submitted that consent isn't necessary since the register for **Kivani land Adjudication Section** has been closed and titles issued to land owners. The counsel wondered how the plaintiff would obtain consent to sue the **2nd** defendant who already has a title deed issued to him.

9. I have read the notice of preliminary objection and the submissions filed by the plaintiff's counsel. I have also read the ruling in **Nairobi ELC no. 599 of 2013 Robert Muli Matolo Vs Director of Land Adjudication** and 2 others. In my view this suit is res judicata as it is on the same subject matter, same parties and same issues that were decided in **ELC no. 599 of 2013**. On that ground alone and without considering the other grounds in the notice of preliminary objection, I hereby strike out the suit with costs to the second and the third defendants.

Signed, Dated and Delivered this 29th day of November, 2017

MBOGO C.G

JUDGE

In the presence of :

Mr. Kwemboi Court Assistant

Mr. Hassan Hold Brief for Mr.Masika for the 2nd&3rd Defendants/Respondents.

No appearance for the plaintiff

MBOGO C.G

JUDGE

29/11/2017