

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT NO 155 OF 1993

BAHATI TEMO

WILLIAM MJAPE

STEPHEN KAHINDI MWADZAVI

CHARLES CHARO

JOHNSON KOYA

KESA MJAPE

ROBERT ROGO.....APPLICANTS/PLAINTIFFS

VERSES

SWAFIYA ABDALLA

FATUMA SWALE (as administerix of the Estate of the late

Swaleh Mahdi (Original Defendant))....DEFENDANTS/RESPONDENTS

RULING

1. The Application under consideration is the Defendants Notice of Motion dated 9th November 2011 and filed in Court on 11th November 2011 and brought under Sections, 34, 51 and 94 of the Civil Procedure Act and Order 51 of the Civil Procedure Rules. I note from the Court record that on 27th November 2013, the Court (Mukunya, J) issued an order in respect to the said application upon hearing counsel for the Defendants and in the absence of the Plaintiffs who had been duly served with a hearing notice. When the matter came up before me on 10th October 2017, Mr. S. K. Kimani counsel for the Defendants/Applicants argued the Application and submitted that on 27th November 2013, the Court made an order for valuation and a valuation report dated 23rd June 2014 was made and filed on 28th August 2014. He urged the Court to consider the valuation as reasonable compensation to the Plaintiffs save for the 7th Plaintiff who had no structure and therefore is not entitled to any compensation.

2. The 5th Plaintiff filed a Notice of Intention to act in person and a Notice of Withdrawal of Suit on 6th October 2017. He however sought for time to consult his former advocate who is in Malindi. Although the 2nd, 3rd, 4th, 6th and 7th Plaintiffs filed their Replying Affidavit on 25th September 2017, they sought for leave to file Further Affidavits in response to the Application.

3. I have considered the Submissions by both parties. It would be in the pursuit of substantive justice, in accordance with Article 159 of the Constitution to allow the Plaintiffs file the Further Affidavits as requested. This would enable the Court appreciate and consider all material evidence in order to reach a fair and just determination. I grant leave to the Plaintiffs to file and serve their Further Affidavits within 21 days from today. The Defendants are hereby granted corresponding leave to file and serve any further

response to the Plaintiffs' Further Affidavits within 14 days of service.

Orders accordingly.

Ruling dated, signed and delivered at Mombasa this 22nd day of November 2017

C. YANO

JUDGE