



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 71 OF 2017**

**URBAN TECHNICAL SERVICES ..... 1<sup>ST</sup> PLAINTIFF**

**JAMES MBOGO KARIUKI .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JAMES WAINAINA NDUNGU.....1<sup>ST</sup> DEFENDANT**

**JOHN NJENGA MBUGUA .....2<sup>ND</sup> DEFENDANT**

**MBULA MUNYAO.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. In the Notice of Preliminary Objection dated 8<sup>th</sup> May, 2017, the 1<sup>st</sup> Defendant has averred that the Plaintiffs' pleadings are fatally defective as they offend the provisions of Order 4 Rule 3 of the Civil Procedure Rules; that the 2<sup>nd</sup> Plaintiff is not properly joined in these proceedings and that the Application is fatally defective.
2. In his submissions, the 1<sup>st</sup> Defendant's advocate submitted that neither the 1<sup>st</sup> Plaintiff nor the 2<sup>nd</sup> Plaintiff have been authorized by the registered owner of the property to sign the Verifying Affidavit and other documents; that the provisions for Order 4 Rule 1(4) of the Civil Procedure Rules are mandatory and that the 2<sup>nd</sup> Plaintiff has no capacity to sue the Defendants.
3. Counsel submitted that the 2<sup>nd</sup> Plaintiff has no locus standi to institute the suit.
4. On the other hand, the Plaintiffs' counsel deponed that the pleadings herein demonstrate several contested issue as to title, quiet possession, trespass and attendant unlawful acts; that as tenants, the Plaintiffs need not seek the authority of the landlord when seeking relief as against a trespasser and that the 2<sup>nd</sup> Plaintiff has instituted the suit in his own capacity.
5. In the Plaint dated 23<sup>rd</sup> February, 2017, the Plaintiffs described themselves as "a limited liability company duly incorporated under the companies Act" and a male trading as Makuti Leisure Village respectively.
6. The Plaintiffs have further averred that they are the lawful proprietors and Lessees of L.R. No. 18062 and 18063.
7. According to the averments in the Plaint, the Defendants unlawfully fenced off the suit land on the

claim that the suit properties belong to them.

8. The Verifying Affidavit annexed on the Plaint was sworn by James Mbogo Kariuki who has described himself as “*the Co-Plaintiff.*” There is no Verifying Affidavit annexed on the Plaint sworn by the 1<sup>st</sup> Plaintiff's Director, neither is there evidence to show that the said James Mbogo Kariuki had the authority of the 1<sup>st</sup> Plaintiff to swear the Verifying Affidavit.

9. Order 4 Rule 4 of the Civil Procedure Rules provides that where the Plaintiff is a corporation, the Verifying Affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.

10. The Plaintiffs have not annexed the authority of the companies under seal authorizing James Mbogo Kariuki to swear the Verifying Affidavit.

11. The provisions of Order 4 Rule 4 of the Civil Procedure Rules are in mandatory terms. The lack of a letter of authority of the 1<sup>st</sup> Plaintiff cannot be said to be an “*undue procedural technicality.*” It is mandatory requirement of the law that must be complied with for the current suit to be competent.

12. For those reasons, I strike out the Plaintiffs' suit with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**