



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ELC CIVIL SUIT NO. 511 OF 1999
MOHAMMED B. BWANAADI &
ANOTHER.....PLAINTIFFS

-VERSUS-

THE REGISTERED TRUSTEE OF NATIONAL CHRISTIAN OF KENYA &
ANOTHER...DEFENDANTS

RULING

1. The notice of motion for determination is dated 28.8.14 in which the applicants seek the following orders ;
 - i) That costs be payable to the advocates representing the interested parties in this case.**
 - ii) That the said costs be paid from the estate of Khator Bin Salim's estate account.**
2. The application is supported by the affidavit of Andrew Isaac Hayanga advocate and such other grounds stated to be adduced during the hearing. Hayanga deposed that the applicants are beneficiaries of the estate of Khator Bin Salim. They made an application dated 24.5.2012 to be joined as interested parties in the suit and were joined via a consent order filed in Court on 7th August 2012. He further deposed that in a meeting held on 21.1.2014, the parties agreed that costs was to be paid off from the estate and yet he is yet to receive their costs from the Kshs Eleven (11) Million retained by the plaintiff as costs. They have written letters demanding for costs which has been ignored.
3. The application was opposed by the administrators of the estate vide their notice of grounds of opposition filed in Court on 20th February 2015. The ground stated inter alia that ;
 - i) The estate of Khator Bin Salim did not retain the services of Hayanga & Co so they cannot pay their costs**
 - ii) The beneficiaries who retained his services should pay his fee from their share of settlement**
 - iii) The estate assets/funds cannot be applied in settlement of fees incurred by some beneficiaries unless with leave of the Court.**

iv The suit had been settled when the applicants sought to be joined and they never participated in the proceedings before and after the settlement.

4. The parties filed written submissions and cited relevant case laws. I have had occasion to consider these submissions in reaching this determination. From the record, the consent filed in Court on 7.8.2012 was adopted as an order of the Court on 4th December 2012. The proceedings recorded in the file after this date shows the matter was only listed for mentions. Then on 4th June 2013, a consent was entered into between the plaintiffs and the defendants. In this consent, parties agreed that each party shall bear their respective costs of the suit.
5. In the consent of 4.6.2013, it referred to a consent judgement entered on 23rd November 2012 which had awarded the plaintiffs costs. These costs were agreed to have been subsumed in the purchase price agreed upon by the latter consent. Subsequent to this consents, the interested parties filed an application dated 10th July 2013. In this application, the applicants sought the Court to issue orders barring the 1st and 2nd plaintiffs and or restrain them from transferring or attempting to transfer plot No 196/III/MN CR No 4194/1 to anybody until further orders of this Court. It is not clear how this application was concluded as there is nothing on record stating so. All there is on record is about parties agreeing to attend a meeting on 20.1.14 at the offices of the applicants advocate.
6. But I will take it that it was concluded hence the reason the present application was filed. The reason why I have perused the record is because costs follow the events. The applicants can only demand costs where they have participated and if such participation was necessary. In the submissions of the applicant, they have alleged fraud and lack of intergrity on the part of the plaintiffs. However the proceedings/pleadings on record does not support such averments. In any event, they joined this suit after the consent judgement was recorded. They did not attempt to set aside that judgement or question it to demonstrate to this Court that the plaintiffs acted in bad faith to the detriment of the beneficiaries of the estate of Khator Bin Salim when they reached the settlement of this suit.
7. I have not been satisfied by the applicants that they were necessary parties at the stage they applied to join this suit. As aptly put by the Plaintiff/Respondent, the funds of the estate should not be used to settle expenses incurred by a part of the beneficiaries when such an expense was not necessary. There is nothing their joining the suit added or subtracted from the consent judgement. Consequently I find that the applicants are not entitled to any costs to be met by the estate funds. The application is hereby dismissed with no order on costs.

Ruling dated and delivered in Mombasa this 12th day of February 2016

A. OMOLLO

JUDGE