



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 12 OF 2016

GOLD COAST HOTEL LIMITED.....PLAINTIFF

=VERSUS=

RUPERT PARTIDGE.....DEFENDANT

RULING

1. What is before me is the Application by the Defendant dated 23rd February, 2016 in which the Defendant is seeking for the following orders:-
 - (a) **THAT this Honourable court be pleased to strike out the name of RUPERT PATRIDGE sued herein as the Defendant.**
 - (b) **THAT this Honourable court be pleased to join Sally Mahihu and Rupert Patridge (the Executors of the Estate of Lilli Jorgensen (deceased) as Defendants herein.**
 - (c) **THAT costs be in the cause.**
2. The Application is premised on the grounds that the has been erroneously sued in his personal capacity; that for the determination of the real issues, it is vital that the orders being sought are granted and that the Plaintiff will not be prejudiced in any way by the orders being sought.
3. The Defendant/Applicant has deponed that him, together with Mrs Sally Njambi Mahihu are the executors of the Estate of Lilli Jorgenser (deceased); that during her life time, the deceased was the registered proprietor of L.R. No.Gropu X1/22 Fumbeni and that he should not have been sued in his personal capacity.
4. In his reply, the Plaintiff's director has deponed that the Plaintiff's case is that the Defendant has been making illegal visits to the Plaintiff's premises; that the Applicants are not the Administrators/Executors of the alleged Estate and that the Defendant's alleged capacity has been challenged in Succession Cause Nos 140 of 2014 (Malindi) and 431 of 2014 (Mombasa).
5. The advocates for the parties appeared before me and made oral submissions. I have considered those submissions.
6. In the Plaint, the Plaintiff has averred that it is the registered proprietor of plot No. 22 Group XI-Kilifi; that on several occasions, the Defendant has visited the suit property in the company of unknown persons and that the case as against the Defendant is for a permanent injunction.
7. The Defendant is seeking to be sued in his capacity as the administrator of the Estate of the late Lili Jorgensen whom he alleges to be the owner of the suit property.
8. If the Plaintiff's case is that the Defendant is trespassing on the suit property, the Defendant cannot

- insist that he “trespassed” on the suit property in his capacity as the executor of the Will of the deceased.
9. The suit was filed by the Plaintiff and it is for the Plaintiff to decide whom he wants to sue.
 10. If the Defendant's case is that the Plaintiff has sued the wrong party, then he should raise that plea in his Defence instead of applying to have his name struck out of the pleadings.
 11. Indeed, the court cannot intervene at this stage on the issue of whether the Defendant should not have been sued, before hearing the Plaintiff, and direct that the Defendant's name should be expunged. That can only happen after the court has heard the matter or at the instance of the Plaintiff himself.
 12. On the basis of the pleadings before me, I am not satisfied that the Defendant was improperly sued in this matter. That is an issue that can only be dealt with at the hearing of the suit.
 13. For those reasons, I dismiss the Defendant's Application dated 23rd February, 2016 with costs.

Dated, signed and delivered in Malindi this 14th day of July, 2016.

O. A. Angote

Judge