



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KISUMU
LAND CASE NO.150 OF 2014
GRACE AYUGI MAHULO

(Also suing as the administrator of the estate of the late
MARCELINA AMOLO MAHULO).....PLAINTIFF

VERSUS

SAMUEL OKELLO.....1ST DEFENDANT

GEORGE OCHIENG.....2ND DEFENDANT

LAMECK ARODI.....3RD DEFENDANT

MWANAISHA TUNDUKA.....4TH DEFENDANT

BRIGHT ODERA.....5TH DEFENDANT

RULING

1. **Samuel Okello and Lameck Akodi**, the 1st and 3rd Defendants, respectively filed the notice of motion dated 17th August 2015 seeking for the following orders:

a) The stay of this suit against the 1st and 3rd Defendants until the costs in **Kisumu ELC No.58 of 2012, Grace Ayugi Mahulo & Another -V- Samuel Okello & 4 others** is paid.

b) Alternatively the 2nd Plaintiff's suit against the 1st and 3rd Defendants herein be struck out.

c) Costs.

2. The notice of motion is based on the six grounds on the application and is supported by the affidavit of Robert Ouma Njoga advocate sworn on the 17th August 2015 and further affidavit sworn on 19th October 2015.

3. The Plaintiff advocates submission dated 14th October 2015 was filed on 19th October 2015 while that of the 1st and 3rd Defendant's counsel dated 22nd February 2016 were filed on the same date.

4. The issues for determination are as follows:

a) Whether the 1st and 3rd Defendants have established their case for stay orders.

b) Who pays the costs.

5. The court carefully considered the grounds on the notice of motion, grounds of opposition, affidavit evidence by both sides, the written submissions by both counsel and concluded as follows:

a) That from the notice of withdrawal of suit dated 25th August 2014, signed by **Grace Ayugi Mahulo**, and the plaint both dated 25th September 2012 in **Kisumu ELC NO.58 of 2012** attached to supporting affidavit, it is clear the 1st and 3rd Defendants herein are appearing in the same position in that suit. That the Plaintiff herein was the 1st Plaintiff in that other suit while she is also the administratrix of the 2nd Plaintiff's estate.

b) That from the grant of letters of administration dated 30th May 2014 issued in **Kisumu H.C. Succession Cause No.217 of 2013**, **Masela Amolo Odwuor** died on 27th August 2010 long before the **Kisumu ELC NO.58 of 2012** was filed. That the Plaintiff, **Grace Ayugi Mahulo** has been appointed the administratrix of the said deceased's estate, has not been disputed.

c) That **Marcelina Amolo Mahulo**, the 2nd Plaintiff in **Kisumu ELC No.58 of 2012**, could not have been involved in filing that suit if it is true that she had died on 27th August 2010. That **Kisumu ELC No.58 of 2012** having been withdrawn through the notice dated 25th August 2014, cannot be said to be pending for the purposes of **Section 6 of the Civil Procedure Act Chapter 21 of Laws of Kenya**.

d) That the notice of motion dated 17th August 2015 to stay these proceedings or strike out the suit against the 1st and 3rd Defendant has no merit.

6. That for reasons set out above the notice of motion dated 17th August 2015 has no merit and is dismissed with costs to the Plaintiff

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 14TH DAY OF SEPTEMBER 2016

In presence of;

Plaintiff Absent

Defendant absent

Counsel Mr Tarema for Onsongo for Plaintiff/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/9/2016

14/9/2016

S.M. Kibunja J.

Oyugi court Assistant

Parties absent

Mr Terema for Onsongo for Plaintiff/Respondent

Court: Ruling dated and delivered in open court in presence of

Mr Tarema for Onsongo for Plaintiff/Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

14/9/2016