



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**CIVIL SUIT NO. 166 OF 2015**

**YATICH CHEPKONGA & 13 OTHER MEMBERS OF**

**KAMGOIN VILLAGE.....PLAINTIFFS/APPLICANTS**

**VERSUS**

**THE CHAIRMAN, SECRETARY, TREASURER, BOARD OF TRUSTEES,**

**BARINGO TECHNICAL COLLEGE.....DEFENDANT/RESPONDENT**

**COURT RULING**

The plaintiffs have filed this suit claiming that they are male adults of sound mind and residing at Kamgoin village, Kapsoo Kapropita Location, Baringo County in the Republic of Kenya. They claim to be owners of various parcels of land known as ***Baringo Kapropita/107, 223, 109, 170, 229, 111, 110, 109, 167, 168, 175, 176, 177, 221 and 222.*** They seek orders that they are the rightful and registered owners of all the parcels of land named in the suit. The suit herein is filed by 14 members of the Kamgoin Location who gave Mr. Yatich Chepkonga the authority to plead on their behalf. On the basis of this authority, the said Yatich Chepkonga swore the verifying affidavit to the Plaintiff and the Supporting affidavit deponed on 29.6.2015 in respect of the Notice of Motion dated 15.6.2015.

On 20.6.2015, Mrs. Chebii & Company Advocates filed a Notice of Motion dated 30.6.2015 praying that the plaintiff to be struck out for being incompetent and abuse of court process, and that some of the plaintiffs are dead and that precisely, ***Mr. Yatich Chepkonga*** the deponent of the Verifying affidavit died before the filing of the suit.

When the matter came for hearing on the 30.6.2015, this court ordered that the plaintiffs avail themselves for verification on 3.7.2015. On the 3.7.2015, I called out the file and directed that the plaintiffs identify themselves and to the courts surprise most of the plaintiffs were dead including ***Mr Yatich Chepkonga.***

I have ascertained that Mr. Yatich Chepkonga died before the filing of this suit and therefore could not purport to bring this action either on his behalf or with the authority of the other plaintiffs. The Verifying affidavit to the plaintiff and the supporting affidavit to the Notice of Motion dated 15.6.2015 are a nullity as they are sworn by a deceased person. The upshot of the above is that the whole suit is a nullity bordering on fraud as a deceased person cannot swear affidavit.

The Verifying affidavit to the plaintiff is hereby declared a nullity and the suit herein is struck out with costs to the defendant.

**DATED AND DELIVERED AT ELDORET THIS 3RD DAY OF JULY, 2015.**

**ANTONY OMBWAYO**

**JUDGE**