



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ENVIRONMENT AND LAND CASE NO. 19 OF 2012**

**MOHAMED SAFIQ RAFIQ.....PLAINTIFF**

**- V E R S U S -**

**1. AYUB KHAN KARIM .....1ST DEFENDANT**

**2. THE DISTRICT LAND REGISTRAR KWALE .... 2ND DEFENDANT**

**RULING**

[1] The applicant herein prays that the plaint filed herein be struck out. That the suit be dismissed and the costs of the suit be awarded to the defendants.

[2] The applicants claim is based on the fact that the plaintiff claims to be the registered owner of Kwale/Pungu fuel area/3 the suit property, when he was not a registered owner. Further that the plaintiffs wife Sajdha Hameed Moghul did not object to the sale of the suit property to the defendant.

It is argued that the plaint is without merit and should be struck out.

[3] The applicant supported his claim and filed affidavits through Retired Chief Justice Abdul Majid Cocker, Mohamed Zabir - UD Din Ahmad, Malik Senior Counsel and the defendant. In the defendants affidavit he deponed how he was registered as the owner of the suit land. He annexed the copy of the title and the green card and how he purchased the property from the estate of Abdul Hameed Moghal.

[4] The sale was at arms length. On his part the former Chief Justice Abdul Majid Cocker deponed that Abdul Hameed Moghul was his brother in law having married his younger sister. That the deceased died on 21st April 2003 at Nairobi. That he was the administrator of his estate having received letters to do so in Nairobi Succession Cause No.. 3341of 2003. He explained how he sold his properties Land Reference Number 209/8000/48 and Kwale/Pungu Fuel Area/3 and distributed the shares to the deceased beneficiaries who included the plaintiffs wife Sajdha Abdul Hameed Moghul who got 14.625% of the deceased estate. She was a daughter of the deceased by his first marriage. That the administrator instructed A.H. Malik & Co. advocates to trace the whereabouts of Sajdha Abdul Hameed Moghul who was resident in England and was not for a long time in contact with the deceased family.

[5] That Sajdha's mother Hafiza Begum (now deceased) after divorcing the

deceased Abdul Hameed Moghul married Abdul Karim Khan who until a few years lived in Kenya. That once Sajdha was traced in the UK by A.H. Malik & Co. Advocates. She instructed the said advocates in writing, that once the two properties were sold, to pay her share to Abdul Karim Khan as follows:

LR NO. 209/80000/48 Kshs. 784,101

KWALE PUNGU FUEL AREA/3 - Kshs. 121,187.50

[6] The former Chief Justice says that he sold Kwale/Pungu Fuel Area/3 to the defendant herein. He did so in his capacity as the administrator of the estate of the deceased. He states that the plaintiff has no *locus standi* to file this suit or have any right in respect of the deceased Abdul Hameed Moghul. That his claim over Kwale/Pungu Fuel area 3 is fraudulent and a complete attempt to blackmail against the lawful present owner of the property Ayub Khan Karim.

[7] All the relevant documents were attached to the application. The plaintiff respondent in his submissions argues that striking out is a technicality and is prohibited under Article 159 (2) (a) (d) (e) of the Constitution of Kenya. He argues he should be heard on merit. That Order 2 rule 15 (1) is archaic and were made before the new Constitution and that they are not effective. That the donor of the power of Attorney is his wife who was once registered owner of the suit property. That the transfer was made illegally.

[8] The applicant has clearly established by documentary evidence how this property was sold to the defendant by the Administrator of the Estate of the deceased father of the plaintiffs wife. Documents are attached to show how the estate was distributed to the three children of the deceased and his widow. One of the children was Sajdha Abdul Hameed Moghul who got 14.625% of the deceased estate. She got Kshs. 784,101 from the sale of land reference Number 209/8000/48 and Kshs. 121,187/50 from the sale of Kwale/Pungu Fuel area/3 the suit premises. She is the plaintiffs wife. She instructed A.H. Malik & Co. to pay this money to Abdul Karim Khan her mothers second husband. Her letter of authority from London England is dated 12th August, 2006.

[9] The money was paid vide paying out voucher No. 12588 and paid out vide cheque no. 395918 of Chase Bank Ltd. The voucher is dated 27th August 2004. It is duly signed. It was for Kshs. 784,101. The transaction is indicated as share in purchase price for Sajidha Abdul Hameed Moghul for 209/8000/48.

[10] The plaintiff's wife has not denied these facts anywhere.

The suit by her husband is truly without merit. He has no locus to file it, the estate having been distributed by the lawful Administrator of the estate as appointed by this court and shares distributed as sanctioned by the Islamic Law.

This suit is therefore struck out as being an abuse of the court process. The costs of the same shall be to the applicant.

**Dated and delivered in open court in Mombasa this 28th day of February, 2014.**

**S.N. MUKUNYA**

**JUDGE**

**28.2.2014**

In the presence of:

Anjarwala Advocate for the applicant