



Sule (Suing in his Capacity as the Legal Representative and Next of Kin of Sule Obuola, Deceased) v Hayer & 2 others (Environmental and Land Originating Summons E017 of 2023) [2024] KEELC 1407 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1407 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2023**

**E ASATI, J
MARCH 7, 2024**

BETWEEN

PASCAL MATEGO SULE (SUING IN HIS CAPACITY AS THE LEGAL REPRESENTATIVE AND NEXT OF KIN OF SULE OBUOLA, DECEASED) PLAINTIFF

AND

**CHARANJIT SINGH HAYER 1ST DEFENDANT
HAYER BISHAN SINGH & SONS LTD 2ND DEFENDANT
PAUL ONYANGO SULE 3RD DEFENDANT**

RULING

1. This ruling is in respect of the 1st and 2nd Defendant’s Notice of Motion application dated 2nd October, 2023 brought pursuant to the provisions of section 7 of the *Civil Procedure Act* (Cap.21 Laws of Kenya) and sections 7 and 9 (2) of the *Limitation of Actions Action* Cap 22 Laws of Kenya.

The application seeks for orders that: -

- a. The suit be struck out with costs for being incompetent, incurably defective and misconceived as the cause of action herein is both *res judicata* and is statutorily time barred.
- b. Cost of the application be provided for.

2. The grounds upon which the application was brought are that the Plaintiff has no *locus standi* to institute or prosecute the suit as he has not taken out a Grant of Letters of Administration in respect of the Estate of the late Michael Sule Obuola alias Sule Obuola who passed away on 17th March, 1986. That to the extent that all those parcels of land known as Kisumu/Ojola/1766 and Kisumu/Ojola/1767 were the subject matter in Kisumu in Kisumu HCCC No.63 of 2006, Paul Onyango Sule



v Charanjit Hayer & Gurbux Singh Hayer and to the extent that the said earlier suit was determined by consent of the parties which consent determined the rights of the parties, this suit is *res judicata*. That the deceased passed away on 30th May, 2021. That the Defendants who are the current registered owners and/or proprietors of the said parcels of land have been so registered in occupation and possession and working on the same as follows: -

- a. Kisumu/Ojola/1666 in the name of Gurbux Singh with effect from 22nd December, 1988.
- b. Kisumu/Ojola/1767 in the name of Gurbux Singh Hayer and Charanjit Singh Hayer with effect from 7th November, 1995.

That the deceased was in possession of the said lands before the Defendant/Applicants took over possession of the same. That the cause of action for recovery of the land arose on the date of death of the deceased. And that the suit is statutorily time barred and hence misconceived, misbegotten, incurably defective and an abuse of the court process.

3. The application was supported by the averments in the Supporting Affidavit sworn by Jane Betty Atieno on 2nd October, 2023 and the annexures thereto.
4. The application was not opposed.
5. It was submitted on behalf of the 1st and 2nd Defendants vide the written submissions dated 15th October, 2023 that the Applicant relies on the provisions of Section 80(2) of the [Law of Succession Act](#) (Cap 160) of the Laws of Kenya. That the Plaintiff does not have *locus standi* to bring the suit. Counsel relied on the cases of [Alred Njau v City Council of Nairobi](#) (1983)KLR 625 where the court of Appeal held, inter alia, that to say that a person has no *locous standi* means that the person has no right to appear or be heard in such and such proceedings and the case of Julian Adoyo Ongung'a v Francis Kiverenge Abano where the High Court held inter alia that a party without *locus standi* in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists.
6. Counsel submitted further that in this suit, the Plaintiff seeks to litigate as the representative of the deceased but has not exhibited any Grant of Letters of Administration of the estate of the deceased. That he therefore lacks capacity and the suit is incompetent, defective and an abuse of the court process and should be struck out.
7. Counsel relied on the Section 7 of the [Civil Procedure Act](#) to submit that the suit is *res judicata*. That an earlier suit namely Kisumu HCCC No.63 of 2006 Paul Onyango Sule v Charanjit Hayer and Gurbux Singh Hayer was resolved by way of a consent that resulted in a decree which was a final determination of the issue of ownership of the suit land hence any subsequent suit is *res judicata*.
8. I have considered the application. The suit herein was commenced by way of the Originating Summons dated 8th May, 2023. The Plaintiff Pascal Matengo Sule indicated at the heading of the Originating Summons that he is suing in his capacity as the legal representative and next of kin of Sule Obuola, deceased.
9. In the body of the Originating Summons, the main complaint is that land parcel numbers Kisumu/Ojola/1766 and 1767 which were initially registered in the name of Michael Sule Obuola, deceased who was the plaintiff's father had been caused by the Defendants to be registered in their names unlawfully without the authority of the deceased or his heirs.
10. A personal representative of a deceased person as defined in Section 3 of the [Law of Succession Act](#) means the executor or administrator as the case may be. And administrator is defined in the same section as a person to whom a Grant of Letters of Administration has been made under the [Act](#). No Letters of



Administration were filed with the Originating Summons or have been exhibited in response to the present application by the Plaintiff. The Plaintiff described himself in paragraph 2 of the Affidavit in Support of the Originating Summons as “son and heir beneficiary” of Michael Sule Obuola, deceased. The law, save for the exceptions expressly provided for, only recognizes persons who have taken out Letters of administration pursuant to the Law of Succession Act as personal representatives of deceased persons. Section 2 (1) of the Act states “Except as otherwise expressly provided for in this Act or any other written law, the provisions of this act shall constitute the law of Kenya in respect of and shall have universal application to all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the Administration of the estates of those persons.”

11. I find that the applicant having failed to demonstrate compliance with the Law of succession Act prior to filing of the suit, lacks capacity to sue on behalf of the estate of the deceased. Hence the suit herein filed by a person without capacity is incompetent.
12. The cause of action is stated to have arisen in the years 1988 and 1995 when the certificates of lease were issued in favour of the Defendants. A suit filed in the month of May, 2023 to recover land allegedly unlawfully taken away and registered in favour of the Defendants about 28 years earlier is obviously time-barred under the provisions of Section 7 of the Limitation of Actions Act.
13. There appears to have been an earlier suit over the suit lands wherein the issue of ownership was canvassed and determined by consent. Annexure JBA2 to the Supporting Affidavit is a copy of decree in KSM HCC No 63 of 2006 between the 3rd Defendant herein as Plaintiff and the 1st Defendant and another as defendants. The document shows that the plaintiff in that former suit had brought the suit as administrator of the estate of the deceased herein. The decree read, in part, that “the estate of the late Michael Sule Obuola now represented by Paul Onyango Sule as administrator, is estopped now and in future from raising any issue of defect in either titles held by Gurbux Singh Hayer and Charanjit Singh Hayer relating to land parcel No.s Kisumu/Ojola/1766 and Kisumu/Ojola/1767 respectively.”
14. I find that in view of the existence of the former suit and the contents of the decree which has been exhibited, the suit herein is *res judicata*.
15. This court has held that the suit herein is incompetent for having been filed by a person who lacks capacity, is statutorily time-barred and *res judicata*. All these are grounds for striking out suits. For this reason, the court finds that the application to have the suit struck out is merited. The application is allowed and the suit hereby struck out. Costs to the 1st and 2nd Defendants.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 7TH DAY OF MARCH, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

No appearance for the Applicants

No appearance for the Respondent.

