



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CIVIL SUIT NO. 63 OF 2005**

**PETER KIPKEMOI CHERUIYOT.....1<sup>ST</sup> PLAINTIFF**

**CHARLES ARAP MAIYWA.....2<sup>ND</sup> PLAINTIFF**

**CHERUIYOT ARAP CEHEPKWONY.....3<sup>RD</sup> PLAINTIFF**

**ESTHER CHELANGAT.....4<sup>TH</sup> PLAINTIFF**

**JONATHAN MIBEL.....5<sup>TH</sup> PLAINTIFF**

**CHEPCHILAT ARAP MAINA.....6<sup>TH</sup> PLAINTIFF**

**PHILIP RUGUT.....7<sup>TH</sup> PLAINTIFF**

**(Suing in a representative capacity)**

**VERSUS**

**JAMES FINLAY (K) LTD.....1<sup>ST</sup> DEFENDANT**

**COUNTY COUNCIL OF KIPSIGIS.....2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Plaintiff, via his manmade Chamber Summons application dated the 22<sup>nd</sup> November 2019 which does not state the provisions under which it is brought and which is equally ambiguous, seems to complain that the suit herein against the 2<sup>nd</sup> Defendant has been revived by M/S Sigira Siele Advocate without instructions from the 2<sup>nd</sup> Defendant/Respondent herein, in a matter that had long been settled between the Plaintiffs and the said 2<sup>nd</sup> Defendant.
2. The Application was opposed through the Grounds of Opposition dated the 28<sup>th</sup> February 2020 to the effect that it was scandalous, vexatious and contained unsubstantiated allegations that were defamatory to Counsel for the 2<sup>nd</sup> Respondent.
3. That the Plaintiff's suit stood dismissed on 30<sup>th</sup> August 2014 in a Ruling delivered on 30<sup>th</sup> July 2014 and a decree confirming and dismissal of the suit was subsequently issued on the 12<sup>th</sup> February 2015. That the Court had on two occasions, in its rulings dated 30<sup>th</sup> July 2014 and 10<sup>th</sup> March 2018 pronounced itself as being functus officio and therefore the present application ought to be

dismissed.

4. I have considered the said Application in light of the grounds of opposition herein. I have also considered the findings in the Ruling of the Court delivered on 30<sup>th</sup> July 2014 dismissing the Plaintiffs' suit and to which the Applicant neither appealed nor applied to review the decree therein. I also note that on the 25<sup>th</sup> January 2016 there were directions to the effect that the suit having been dismissed and parties having drawn their Bill of costs, there was nothing before the Court.

5. On the 27<sup>th</sup> January 2017 the 1<sup>st</sup> Plaintiff/Applicant was directed to file an Appeal against the decision of the Court to which he failed to do, but instead filed a Chamber Summons dated 28<sup>th</sup> March 2017 whose prayers were ambiguous but seemed to seek that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants be struck out from the suit. The said application was dismissed via a ruling of 28<sup>th</sup> September 2017 in which pursuant to the Court giving a brief history of the matter in question, clearly stated that it could not re-open the matter. See **Peter Kipkemoi Cheruiyot & 6 Others vs James Finlay (K) Ltd & 2 others [2017] eKLR**. There was again neither an Appeal nor Review filed by the Applicant.

6. The dismissal of the application did not deter the 1<sup>st</sup> Plaintiff/Applicant herein who filed yet another Application dated 23<sup>rd</sup> November, 2017 in a third attempt to revive the suit where he sought to have the 1<sup>st</sup> Defendant herein declared *the only defendant and for costs of the Application*. The Court upon finding that the application was frivolous, vexatious, and a gross violation of the process of the Court, dismissed the said application and warned the Applicant to desist from filing any more applications failure to which he ran the risk of being declared a vexatious litigant. See **Peter Kipkemoi Cheruiyot & 6 Others vs James Finlay (K) Ltd & Another [2018] eKLR**

7. Despite this warning the Applicant herein has filed the preset application castigating Counsel for the 2<sup>nd</sup> Respondent to the effect that he was responsible for delay in the prosecution of Plaintiffs' suit.

8. I find that the Applicant's claim has no prospect of success, his motive is aimed solely at harassing the Defendants and is made without good or just cause thus being synonymous with what can be termed as an abuse of the process of the Court. However much as I would have liked to declare him *a vexatious litigant my hands are tied as* the statute which governs vexatious proceedings is *The Vexatious Proceedings Act Chapter 41 Laws of Kenya* which empowers the Court, by dint of *Section 2* thereof, to declare a person a vexatious litigant.

9. Such declaration would need to be made in an application filed at the instance of the Attorney General to which the Court would have to afford the person so sought to be declared vexatious an opportunity to be heard in those proceedings

10. In the end and having considered all factors herein, I find no merit in the application dated the 22<sup>nd</sup> November 2019 and proceed to dismiss it with costs to the 2<sup>nd</sup> Respondent. The Court still remains functus officio.

**DATED AND DELIVERED AT KERICHO THIS 18TH DAY OF FEBRUARY 2021.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**



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