



**Njoroge & 3 others (Suing on behalf of Soy United Self Help Group) v Spring West Kenya Limited
(Environment & Land Case 24 of 2021) [2023] KEELC 17237 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 17237 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 24 OF 2021**

**EO OBAGA, J
MARCH 16, 2023**

BETWEEN

**JOSEPH NJOROGE 1ST PLAINTIFF
THOMAS TULO LANGAT 2ND PLAINTIFF
MARGARET NJERI WAKABA 3RD PLAINTIFF
DENNIS MWANGI WAMBUI 4TH PLAINTIFF
SUING ON BEHALF OF SOY UNITED SELF HELP GROUP**

AND

SPRING WEST KENYA LIMITED DEFENDANT

RULING

1. The Defendant filed a notice of preliminary objection dated 26/8/2021 in which it raised the following grounds: -
 1. The claimants herein do not have the locus standi to file the suit and the application in a representative capacity in line with order 1 rule 13(2) of the *Civil Procedure Rules*. For failure to include a written authority by persons purported to be represented and the purported authority being wrongly executed by unknown persons for most of the purported litigants.
 2. The suit herein seeking adverse possession is premature having been filed before the end of 12 years as time started to run from 2014 when the Respondent got registered as proprietor of the subject suit property contrary to the provisions of sections 37 and 38 of the *Limitation of Actions Act* cap 22 Laws of Kenya.
 3. The suit herein as it regards adverse possession offends the provisions of order 37 Rule 7(2) of the *Civil Procedure Rules (2010)* which requires that summons be supported by an affidavit to



which a certified extract of the title to the land in question has been annexed. The copy of the title to the land in question which has been annexed is not certified, no longer in existence as further subdivision and new numbers have been created.

4. The suit herein is scandalous, frivolous and abuse of the court process for an attempt by the Applicant to create non-existent property rights.
5. The application dated 17/3/2021 and the entire suit be dismissed with costs.
2. On 30/8/2021, the Defendant raised additional grounds as follows:-
 1. The proceedings herein is a nullity for failure by the applicant to take out the summons to enter appearance and by equally failing to serve the same upon the Respondent herein.
 2. The application dated 17/3/2021 and the entire suit be dismissed with costs.
3. The parties were directed to file written submission on the preliminary objection. The Defendant filed its submissions on 16th December, 2022. The Plaintiffs filed their submissions on 30th January, 2022. I have considered the submissions by the parties. I will consider each of the grounds raised to ascertain whether there is any which can qualify as a pure point of law.
4. On ground one, the Defendant contends that there was no written authority filed as required under order 1 rule 8(1) (2) and order 1 Rule 13(1) and (2) of the Civil Procedure Rules.
5. Order 1 Rule 8(1) of the Civil Procedure Rules provides as follows: -

“One person may sue or defend on behalf of all in same interest. (1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as of all in same representing all or as representing all except one or more of them.”
6. Order 1 rule 13(1) and (2) provides as follows: -
 - (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.
 - (2) The authority shall be in writing signed by the party giving it and shall be filed in the case.”
7. I have perused the pleadings and note that there was authority to prosecute this case. The authority was filed as required. The claim that the authority was signed on behalf of the Plaintiff's is a matter which requires ascertainment. This ground therefore fails.
8. On ground two, the Defendant alleges that the suit was prematurely filed before expiry of 12 years. The reason is that the Defendant obtained title in 2014. This was not the first time title was being registered. This was a transfer from a previous owner. The law is clear that change of ownership does not interrupt time from running. See the case of Paul Kamande Gicheba v Jacob Kinyua Kiragu (2018) eKLR. This ground fails on this account.
9. On ground three, the Defendant contends that the title which was annexed by the Plaintiff's is no longer in existence and has since been subdivided and that in any case the same was not certified. This argument is without merit. The Plaintiffs will not seek to amend pleadings every time there is subdivision. It will be absurd to hold that position. There is the doctrine of *lis pendens* which stops such kind of theatrics. This ground therefore fails on this account.



10. On ground four, the Defendant contends that the Plaintiffs are seeking to create non-existent titles. This is not a pure point of law as there is need to ascertain if the titles are non-existent and if the Plaintiffs are seeking to assert non-existent property rights.
11. On ground six, the Defendant is contending that the Plaintiff's suit is a nullity on the ground that they did not take out summons to enter appearance. The purpose of summons to enter appearance is to give notice to a Defendant that there is a suit against it or him or her. In the instant case, the Defendant has already filed its response to the originating summons. A suit brought by way of Originating summons contains a notice requiring the Respondent to enter appearance within a given time. There is therefore no requirement that an originating summons has to have a separate summons because the Originating summons itself gives even time for entry of appearance. It is therefore superfluous to duplicate summons in an originating summons.
12. It is therefore clear that the Defendant's preliminary objections is devoid of merit. The same is dismissed with costs to the Plaintiffs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16TH DAY OF MARCH, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Mutai for Mr. Chepkwony for Plaintiffs.

Court Assistant –Laban

E. O. OBAGA

JUDGE

16th MARCH, 2023

