



**Ombaba v Keitany (Environment & Land Case E3 of 2023)
[2023] KEELC 18420 (KLR) (29 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E3 OF 2023
FM NJOROGE, J
JUNE 29, 2023**

BETWEEN

SAMUEL MOBEGI OMBABA PLAINTIFF

AND

JANE JEPKOSKEI KEITANY DEFENDANT

JUDGMENT

1. In the originating summons dated 22/2/2023 the plaintiff seeks to be declared owner by virtue of adverse possession of all that parcel of land known as Nakuru Ngongongeri /1224. He states that the same is registered under the name of the defendant who has failed to enter appearance despite service. He asserts that he has satisfied the ingredients of adverse possession. The plaintiff however admits that there are more than one person claiming interest in the suit parcel. He also discloses under oath in his affidavit in support of the O.S. that there is a caveat that has issued in favour of the government in respect of the suit land. He does not say if the caveat includes other lands. This court is aware of environmental concerns in the Rift Valley especially around forest areas which have other spawned litigation involving the government and title holders. It is curious that the title holder's home is just next door to the plaintiff's and she lacks any response to the OS despite service. All that this court can state for now is that by the plaintiff's own concession, the government is an interested party in the land in question and no joinder was made of the government in this matter through its usual land management offices or other organs that may be claiming interest. I am aware that not all government interest in land is quite apparent on the face of the land register and this state of affairs began long ago, only that some government agencies have of late began acquiring title to their lands. However, it is not clear what interest the caveat mentioned in this case is in respect of.
2. In this court's view the plaintiff did not therefore join all the proper parties in the case so that the issues that he raises can not be ventilated with finality. I am aware that according to rules of procedure, joinder does not normally defeat claims, but as the present case has already been prosecuted and it is at judgment stage, and on the ground he plaintiff acknowledges that the government which has not



been joined to the suit has an interest in the land, and further having regard to the fact that adverse possession orders may in the circumstances be issued erroneously and affect the government interest before it is heard, I find that the originating summons should fail and I hereby strike it out with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 29TH DAY OF JUNE, 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

