



Nur & 3 others v Tahir Sheikh Said Investment Limited; Shami Motors Limited (Intended Interested Party) (Environment & Land Case 162 of 2018) [2023] KEELC 18140 (KLR) (19 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18140 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 162 OF 2018**

NA MATHEKA, J

JUNE 19, 2023

BETWEEN

**FATMA SUFI NUR 1ST PLAINTIFF
TAHLIL AYAN AHMED 2ND PLAINTIFF
SADI SAFI NUR 3RD PLAINTIFF
MOHAMED MAHMOOD 4TH PLAINTIFF**

AND

TAHIR SHEIKH SAID INVESTMENT LIMITED DEFENDANT

AND

SHAMI MOTORS LIMITED INTENDED INTERESTED PARTY

RULING

1. The application is dated March 27, 2023 and is brought under Order 22 Rule 22 of the [Civil Procedure Rules](#), Sections 63 (e) and 3A of the [Civil Procedure Act](#) Cap 21 of the Laws of Kenya seeking the following orders;
 1. That this application be certified urgent and its service dispensed with in the first instance.
 2. That this Honourable Court be pleased to set aside the Order granted on March 24, 2022
 3. That upon grant of prayer 2 (above) this Honourable court be pleased to set down the matter for hearing on priority basis,
 4. That the costs of this application be provided for ,



2. It is based on the following grounds that on the March 24, 2022, this Honourable Court granted an order staying this suit pending the hearing and determination of Mombasa HCC No 57 of 2016 TSS Investment Limited & 3 others vs Bank of Africa & 4 others. That on February 15, 2023, the Honourable trial Judge (Hon Mr Justice Kizito) ordered *inter alia* that the Applicant herein is not a party to Mombasa HCC No,57 of 2016 TSS Investment Limited & 3 others v Bank of Africa & 4 others. That the Applicant is incurring untold suffering during the pendency of this suit. That the Applicant is desirous to have this suit heard and determined on merits. That the hearing and of this suit will not prejudice the Respondents in any manner since this court is vested with the jurisdiction to determine the pertinent questions in controversy herein. That litigation must come to an end ultimately.
3. This court has considered the application and the submissions therein. This suit seeks to declare the Plaintiffs as the registered owners of Plot No 154 Section XXI Mombasa Island, by virtue of the doctrine of adverse possession. The Suit Property is said to be charged to Bank of Africa Limited which has purported to exercise its statutory power of sale in favor of the Interested Party herein in Mombasa HCC No 57 of 2016. This is a suit by the Defendant herein challenging Bank of Africa's right to sell and the Interested Party's therein right to acquire the Suit Property. In a Notice of Motion dated August 11, 2021 filed in Mombasa HCC No 57 of 2016, the Defendant here sought to restrain the Interested Party here from interfering with possession of the Suit Property. The two matters concern ownership of the same suit property. The Interested party/Applicant states that it is not a party to Mombasa HCC No 57 of 2016 and hence this matter should proceed. I wish to quote and reiterate the ruling I delivered on March 24, 2022 which stated that;

“I find that all these cases relate to the ownership of the suit land concerning similar parties. I find that this matter cannot run parallel to Mombasa HCC No 57 of 2016 as this can result in conflicting decisions. I find that the latter matter was filed earlier than the instant case and it would be prudent to allow the same to proceed to its conclusion.”
5. Whether or not the Applicant is a party in that suit is immaterial. The suit property is the same and the parties are similar. I find this application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 19TH JUNE 2023.

N.A. MATHEKA

JUDGE

