



Kimani & 2 others (Suing as Chairman, Secretary and Treasurer of Andu Akuru A Twiga CBO) v Chief Land Registrar; National Land Commission (Interested Party) (Environment & Land Case E078 of 2023) [2025] KEELC 1292 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1292 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E078 OF 2023
JM ONYANGO, J
MARCH 13, 2025**

BETWEEN

**JOSEPHAT KIRAGI KIMANI 1ST APPLICANT
MARY MUKAMI KARANJA 2ND APPLICANT
MARY NJERI 3RD APPLICANT
SUING AS CHAIRMAN, SECRETARY AND TREASURER OF ANDU AKURU
A TWIGA CBO**

AND

THE CHIEF LAND REGISTRAR RESPONDENT

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. The Applicant instituted this suit vide Originating Summons dated 30th October 2023 seeking an order that the Chief Land Registrar be directed to register the name of the Applicant as the proprietor of land parcels Number L.R No 252 and 253 measuring approximately 1000 acres. They also sought a declaration that any titles issued to any other individual other than the Applicant was done illegally. Together with the Originating summons, the Applicant file and Notice of Motion seeking a temporary injunction restraining the 1st Respondent from issuing titles to any other person pending the hearing and determination of the main suit.
2. In response to the said application, the 1st Respondent filed a Preliminary Objection dated 10th January 2024 raising the point that the Applicant failed to annex to the Supporting Affidavit to the Originating



- Summons an abstract of title of the land they adversely claim contrary to the mandatory provisions of Order 37 Rule 7 of the Civil Procedure Rules.
3. The court directed that the said Preliminary Objection be canvassed through written submissions and the Applicant and 1st Respondent duly complied by filing their submissions which I have considered.
 4. The only issue for determination is whether the suit ought to be struck out for failing to annex an abstract of the title in respect of the suit property.
 5. Section 37 Rule 7 of the Civil Procedure Rules provides as follows:
 6. Order 37 rule 7 provides:
 7.
 - (1) An application under section 38 of the *Limitation of Actions Act* shall be made by originating summons.
 - (2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.
 - (3) The court shall direct on whom and in what manner the summons shall be served.
 7. From the above provisions of the Civil Procedure Rules it's clear that the requirement that the originating summons be supported by an affidavit to which a certified extract of title to the land in question is annexed is mandatory. I have perused the supporting affidavit and there is no certified extract of title to the suit properties annexed thereto. A certified extract of title serves a crucial function. In proceedings where an order is sought that a litigant has become entitled to land by adverse possession, it is important to identify with precision not only the land in question but also the registered proprietor thereof.
 8. In the case of *Titus Mutuku Kasuve v Mwaani Investment Limited & 4 Others* [2004] eKLR the Court of Appeal pronounced itself as follows:

“That the identification of the land in possession of an adverse possessor is an important and integral part of the process of proving adverse possession. Indeed rule 3d(2) of Order XXVI of the Civil Procedure Rules requires that a certified copy of the title to the land in question should be annexed to the affidavit supporting the Originating Summons. In this case, the Appellant did not annex a certified extract of the land titles LR No. 1756 and 1757 before the sub-division or even after sub-division. ...The burden was on the Appellant to produce the certified extracts of title in respect of the suit properties.”
 9. Although a photocopy of a title deed may show that such and such a person was the registered proprietor as at a certain date, there changes may since have occurred on the register. It is for this reason that a recent certified extract of title comes in handy as it gives a clear indication of the latest status of the register.
 10. Needless to say, the requirement of certification adds an extra layer of credibility as opposed to a photocopy of title deed which is not certified. I therefore find that the Applicants herein failed to comply with the mandatory provisions of Order 37 rule 7 of the Civil Procedure Rules.
 11. The question that follows is whether the absence of the certified extract of title renders the suit incurably defective and liable to be struck out. The Civil Procedure Rules are silent on the



consequences of failure to comply with this provision thereby leaving the matter to the discretion of the court.

12. In the case of *Kenyatta University & Others v Kimani Mbugua & 78 Others* [2021] eKLR the court held that failure to annex a copy of the extract of title was fatal to the party's claim.
13. However, in the case of *Josiah Njoroge v Ingobor Farm (Registered Trustees and 3 Others)* 2018 eKLR the court decline to strike out the suit as it was of the view that the current constitutional dispensation favours the advancement of substantive justice.
14. In my considered view the extract of the title serves two purposes; the first one is identify the suit property in terms of its description, location and size. The second one is to confirm its registration and ownership status. This is intended to ensure that any orders issued by the court are enforced in respect of the correct parcel of land and the current proprietor thereof.
15. In instant case, the case is still in the early stages and the Respondents have not yet filed their responses to the main suit. In line with the provisions of Article 159 2(d) of *the Constitution* which mandates the court to render substantive justice, I am of the view that the ends of justice would be served if the Applicants are given an opportunity to provide the extract of the title of the suit property rather than suffer the fate of having their suit being struck out without being heard on its merits.
16. Additionally, I note that the Applicant has filed a supplementary List of documents where the extract of title of the suit property is attached. However the same is not legible.
17. Consequently, I disallow the Preliminary Objection and direct that the Plaintiffs file a copy of a recent legible extract of the title within 14 days. In the meantime, the status quo obtaining on the ground and in the register with regard to the suit property shall be maintained pending the hearing of the main suit.

Costs shall be in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13TH DAY OF MARCH 2025.

.....

J. M ONYANGO

JUDGE

In the presence of:

Mr Wachira for the Plaintiff

Miss Ndundu for the Defendant

Miss Kemunto for the Interested Party

Court Assistant: Hinga

