



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPL. NO 5 OF 2016 (O.S)

SAFARI KALUME MWAGONAPLAINTIFF

VERSUS

SAMUEL ODHIAMBO OGUK

KABU MUMBA MUDACH & 11 OTHERS

PWANI JEZOZHUM CO. LTDDEFENDANTS

JUDGMENT

1. The Applicant herein commenced this suit by way of originating summons dated 24th March, 2016.

2. He sought the following;

- a) That let Samuel Odhiambo Oguk, Kabu Mumba Mudachi And 11 Others and Pwani Jezozhum Company Limited enter appearance to the summons within 21 days from the day of service of this summons to make defence because of challenging my litigation unconstitutionally into structural trespass on my lands since early January 2016.
- b) That hereupon this Honourable Court do make orders by rights of the two separate lands stated above in freehold tenure.
- c) That the costs of this application be provided for. Which application is based on the annexed affidavit of Safari Kalume Mwangona and such other grounds as may be adduced during the hearing.

3. MY PRAYERS

1. That the remaining boundaries of my land as definite as dotted in the misrepresented plan hereto annexed and marked "SKM -3" Safari's 1st portion and as drawn to the front side of the misrepresented plan be measured for completeness of annexed plan.

4. The Applicant has listed eight (8) other prayers all to do with his entitlement to ownership of a portion of the suit property.

5. The application is supported by the affidavit of Safari Kalume Mwangona sworn on the 24th March, 2016. In paragraph 1 of the affidavit he states;

"That in suit No. 388 of 2009(O.S) I'm a 7th necessary party, Samuel Odhiambo Oguk is an advocate of Kabu Mumba Mudachi and 11 Others as a Plaintiff and Pwani Jezozhum Company Limited is a Defendant. Annexed is a copy of all litigants marked "S.K.M. - 1."

6. I have gone through the proceedings in Civil Suit No. 3830 of 2009 (O.S). The subject matter therein is Plot Number 830/II/MAINLAND NORTH Original Plot No. 155/66/. The Plaintiffs/Applicants are squatters/residents of Vikwatani Estate.

The Applicant herein Safari Kalume Mwangona is the 7th necessary party. The matter came up for directions on 6th November, 2017 to fix a hearing date before Honourable Justice A. Omolo.

7. I have considered the suit herein. It was filed after the Civil Suit No. 383 of 2009 (O.S). I find that writing judgment herein will be an

exercise in futility.

It is better for Civil Suit No. 383 of 2009 (O.S) to be heard and determined.

Since the Applicant herein is 7th necessary party in that suit, he will have an opportunity to ventilate his claim.

8. I find that the Plaintiff's/Applicant's claim herein though uncontested is dismissed to await the judgment in Civil Suit No. 383 of 2009 (O.S).

It is so ordered.

Ruling Dated, Signed and Delivered at *Mombasa* on the 23rd day of *November* 2017.

L. KOMINGOI

JUDGE

23/11/2017