

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 214 OF 2014 (OS)

ABRAHAM BAYA MWANJE & 4 OTHERS PLAINTIFFS

VERSUS

ELIUD TIMOTHY MWAMUNGA & 7 OTHERS DEFENDANTS

RULING

1. This suit was commenced through an Originating Summons filed on 15 August 2014. In it, the plaintiffs seek orders that they be declared to have acquired title to various parcels of land by dint of the doctrine of adverse possession. The said parcels of land are stated to be Title No. CR 45198 (Original) CR 31784/11, CR 31784/1, CR 271/58/26, CR No. 2391/60, (MN/III/2390/2) MN/III/5108 area 0.549 Ha (approx), (MN/III/2390/3), MN/III/9109 area 0.0460 (approx.), (MN /III/2390/4) MN/III/9110 area 0.0460 Ha (approx), (MN/III/2390/5) MN/III/9111 area 0.0460 Ha (approx.) (MN/III/2390/6) MN/III/9112 area 0.046 ha (approx.), (MN/III/2390/7) MN/III/9113 area 0.266 ha (approx.) , (MN/III/2390/8) MN/III/9114 area 0.0636 (approx.), (MN/III/2390/9) MN/III/9116 area 0.0708 (approx.), CR 33707 (MN/III/2390/11) MN/III/9117 area 0.0815 Ha (approx.) , Plot No. 2391/III/MN and or its subdivisions numbers 2492to2562.

2. It will be seen that various parcels of land were cited but an extract of title was annexed to only one parcel of land that is MN/III/2391. The title is in the name of Eliud Timothy Mwamunga named as the 1st respondent in this suit. The said Mr. Mwamunga is said to have died on 9 June 2018.

3. On 28 January 2021, I issued directions, that in the event that the applicants wish to claim the other parcels of land, then they must annex a certified extract of the title as required by Order 37 Rule 7 (2) within 30 days of the said directions and in default any claim over a title that is not annexed will be struck out. There has been no compliance with this direction. It follows that I have no option but to strike out, which I hereby do, any claim over any parcel of land save for the title LR No. MN/III/2391. The result is that only the suit against the 1st respondent over the land parcel LR No. MN/III/2391 is maintainable. The suit against all other respondents and against all other mentioned parcels of land is hereby struck out with costs.

4. The other issue that I addressed in my directions of 28 January 2021 was the demise of the 1st respondent. There was an application dated 1 October 2018 for substitution of the 1st respondent filed by one Samuel Mazera Mwamunga, which I scheduled for hearing on 19 October 2021. There was no appearance on the part of the applicant and I therefore proceeded to dismiss that application. The result is that there is no pending application for the substitution of the deceased 1st respondent. It is more than one year since he died and following the provisions of Order 24 Rule 4 the suit against the 1st respondent has abated. I proceed to mark the suit against the 1st respondent as abated. Any party is at liberty to apply for the costs of the abated suit against the 1st respondent.

5. Since this suit is for adverse possession and the only surviving title is that which was in the name of the 1st respondent, there is nothing more left of the suit, given that it has abated against the 1st respondent and I have struck it out against the other respondents.

6. The court file may thus be closed save for liberty to apply for the costs of the abated suit against the 1st respondent as earlier mentioned.

7. It is so ordered.

DATED AND DELIVERED THIS 13TH DAY OF JANUARY 2022.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA