



Ndege & another v Okinda & 2 others (Environment & Land Case 11 of 2021) [2022] KEELC 48 (KLR) (21 February 2022) (Ruling)

Neutral citation: [2022] KEELC 48 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE 11 OF 2021
GMA ONGONDO, J
FEBRUARY 21, 2022
FORMERLY MIGORI ELC CASE 40 OF 2019**

BETWEEN

**JOHN NDEGE 1ST PLAINTIFF
ODHIAMBO NDEGE 2ND PLAINTIFF**

AND

**PETER OWINO OKINDA 1ST DEFENDANT
LAND REGISTRAR, HOMA-BAY LAND REGISTRY 2ND DEFENDANT
ATTORNEY GENERAL 3RD DEFENDANT**

RULING

1. By an Originating Summons dated June 17, 2019 and filed in this court on 18th June 2019, the plaintiffs namely John Ndege and Odhiambo Ndege through M/S Agure Odera and Company Advocates sued the three defendants claiming to have acquired a portion measuring approximately six decimal three three hectares (6.33 Ha) in area being part of Kabuoch/K/K/Koguta/1245 measuring approximately fifteen decimal six six hectares (15.66 Ha) in area by way of adverse possession. That the whole parcel of land is registered in the name of the 1st defendant, Peter Owino Okinda.
2. On November 3, 2021, the 1st defendant through the firm of Kijana and Company Advocates, filed a notice of preliminary objection dated November 1, 2021 and a supporting affidavit sworn on 1st November 2021. The same is based on six grounds, inter alia, that this Honourable court lacks jurisdiction to entertain, determine and grant the reliefs sought as against the 1st defendant and that the suit offends the provisions of section 7 of the *Civil Procedure Act* as the suit herein is res-judicata.
3. Since the preliminary objection is a threshold question calling for definitive, determinative and prompt attention as held in the case of *Kakuta Maimai Hamisi-vs-Peris Pesi Tobiko and 2 others* (2013) eKLR,



the same has been canvassed by way of written submissions further to the orders and directions of this Honourable court given on 9th November 2021. This accords with Article 159 (2) (b) of the Constitution of Kenya, 2010 which reads;

“Justice shall not be delayed.”

4. It is important to note that Homa Bay CMC Misc Application number 18 of 2008 and Ndhiwa PM’s court Environment and Land case number 3 of 2020 prominently featured in the originating summons, the preliminary objection together with the supporting affidavit and the parties’ respective submissions duly filed herein. This Honourable court’s perusal of the record in the said cases before making appropriate determination of the preliminary objection and the entire suit, would meet the best ends of justice.
5. To ensure the fair administration of justice as stipulated under Article 162 (2) (b) as read with Article 165 (6) and (7)(a) of the Constitution of Kenya, 2010 and sections 3 (1) and (2) and 13 (7) of the *Environment and Land Court Act*, 2015 (2011) alongside sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya , it is hereby ordered and directed thus;
 - a. The Deputy Registrar of this court to urgently call for the record of the proceedings together with determination, if any, in the two(2) cases as stated in paragraph 4 hereinabove;
 - b. Interim preservation orders of 9th November 2021 extended accordingly.
 - c. This suit is fixed for 18th May 2022 to confirm compliance and for further directions.

DATED AND DELIVERED AT HOMA BAY THIS 21ST DAY OF FEBRUARY, 2022.

G.M.A ONG’ONDO

JUDGE

Present

Mr. Migele holding brief for Agure Odero, learned counsel for the plaintiff.

Kijana, learned counsel for the 1st defendant.

Okello, court assistant.

