

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL CASE NO. 97 OF 2011(O.S.)

JOHN WITILA MUNYASIA ...APPLICANT

VERSUS

WASIKE SICHANGIRESPONDENT

RULING

[1] The applicant filed his application dated 23rd July 2014 under provisions of Order 2 Rule 15 seeking for orders that this suit be struck out being an abuse of the due process of the court.

[2] The reasons for the application are given that the disputed plot of approximately 50 x 100 feet also known as plot No. 53 Chwele Market is a leasehold from the County Government of Bungoma. The argument is therefore that under the provisions of Sec. 41(a) (i) Limitation of Actions Act one cannot have adverse possession on Government or County land. That the suit is therefore an abuse of the process of the court.

[3] The defendant respondent argues that the applicant's only intention and purpose in bringing this application is to delay and keep this fairly old matter in the corridors of justice. That the applicant is relying on a technicality instead of substantial justice. That this application is against the spirit and letter of Article 189(2) (d) of the constitution.

He contends that the applicant exchanged 30 ft x 100 ft of plot No. 53 with the respondent's father one Paulo Munyasia for plot No. 38 Chwele Market and annexed annexture JWM – 1 to that effect.

[4] It is quite obvious from the submissions of the parties that there are issues raised in the suit that need to be canvassed in court and be tested under cross examination. The law relating to adverse possession will only be applied after the said issues are canvassed. In my view, these are not matters that one can deal with without hearing the parties. The parties should have their day in court.

This application is therefore dismissed with costs to the respondents.

DATED at BUNGOMA this 27th day of May, 2015.

S. MUKUNYA

- JUDGE