

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL CASE NO. 123 OF 2010

CHARLES ANGUCHO SUCHIA PLAINTIFF/APPLICANT

VERSUS

ELEPHAS NYAMBAKA COSMADEFENDANT/RESPONDENT

RULING

1. The Respondent has moved the court in his application dated 14.4.2011 brought under Order 2 Rule 15(1) (a), Order 51 Rule 1 of the Civil Procedure Rules seeking;
(a). That the Applicant's suit be struck out.
(b). The Applicant Charles Suchia be ordered to pay the costs of the application and entire suit.

2. The Respondent contends the suit discloses no reasonable cause of action since the Applicant has been in possession of the land with the Respondents permission and cannot qualify to be an adverse possessor. Finally that the Applicant has not established through his pleadings that the Respondent has been dispossessed for the statutory period.

3. The Applicant opposed the application by filing a replying affidavit. He depones his suit raises a reasonable cause of action as he has been in occupation of the suit land for a period of over 12 years.

4. Both parties asked the court to look at the pleadings as filed (Application and replying affidavit) and make a finding. The court has considered those pleadings filed. A suit commenced by way of originating summons for adverse possession requires evidence to be adduced to establish whether the Applicant's possession was adverse to the rights of the title holder (Respondent). You cannot by reading the pleadings only arrive at a decision whether occupation was by permission or not. Secondly, evidence is required to be led when time is considered to have begun running. In light of the foregoing, the present application seeking to strike out the suit is therefore premature. In any event under Order 2 Rule 15 (1) no evidence must be adduced in seeking to strike out suit. Yet grounds (a), (b) and (c) of the Motion require evidence to confirm the facts set out in the grounds.

5. Consequently I find this application as premature and lacking in merit. I hereby dismiss it with costs to Charles Angucho Suchia.

DATED, SIGNED and DELIVERED this 20th day of March 2014

A.

OMOLLO

JUDGE