



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL CASE NO. 58 OF 2012**

**JOSEPH K. M. SIMIYU ..... PLAINTIFF**

**VERSUS**

**MICHAEL KIBIWOTT SERONEY ..... DEFENDANT**

**RULING**

1. The applicant herein Joseph K.M. Simiyu had filed an originating summons against the respondent Michael Kibiwott Seroney seeking a declaration that he had acquired 2 acres out of Kitale Municipality Block 15/Koitogos/5 by way of adverse possession.
2. On 28th June, 2013 the applicant filed a notice to motion in which he seeks among other prayers amendment of pleadings, consolidation of the originating summons with Kitale HCCC No. 9 of 1999 and substitution of parties.
3. The notice of motion is supported by his own affidavit sworn on 28/6/2013. The supporting affidavit does not support his application. I appreciate that the applicant is acting in person having previously acted through advocates.
4. In the supporting affidavit, the applicant prays for a refund of the purchase price as well as profits and general damages if at all specific performance is not available. In the alternative he is seeking to be declared owner of 2 acres by adverse possession.
5. It is difficult to understand what the applicant really wants but given the fact that he is acting in person and is a layman, he may not know the way in which he should go about with such applications.
6. The applicant's application is opposed by the respondent who contends that the application is an abuse of the process of court and that the supporting affidavit of the applicant does not support his application.
7. Having gone through the applicant's application, I have now to decide whether any of the prayers he is seeking can be granted. On the prayer for consolidation, there was little material placed before the court to enable me decide whether this originating summon can be consolidated with Kitale High Court Civil case No 9 of 1999. It turned out from the register of civil files in the High Court registry that this case was dismissed for want of prosecution on 22/6/2007. It therefore follows that there is nothing pending in Kitale HCCC No. 9 of 1999 which can be consolidated with the originating summons herein.
8. The applicant also wanted to be enjoined as a party to Kitale High Court Civil case no. 9 of 1999. If he wanted to be enjoined to that suit that application should have been made in that file and as I have already said hereinabove, this suit is non-existent the same having been dismissed in 2007.
9. Regarding his prayer for amendment of pleadings, there is no basis upon which such an order can be made. He has not indicated the nature of the amendment he is seeking so that the court can consider whether it is merited or not. There is not even a draft amended originating summons or any other pleading annexed to his notice of motion.
10. For the reasons given hereinabove, I find that the applicant's motion lacks merit. There same is

hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 9th day of April, 2014.

**E. OBAGA,**

**JUDGE**

In the presence of the plaintiff and defendant. Court Clerk – Kassachoon.

**E. OBAGA,**

**JUDGE**

**9/4/2014**