



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CIVIL SUIT NO.16 OF 2006 (O.S.)

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22 OF THE LAWS OF KENYA

AND

IN THE MATTER OF REGISTERED LAND ACT CAP 300 OF THE LAWS OF KENYA

BETWEEN

FLORENCE NYABETA OPILI.....PLAINTIFF

VERSUS

MWASAME MASINDEK KHAKAME.....1ST DEFENDANT

RICHARD WAFULA MASINDE.....2ND DEFENDANT

AND

JOSHUA BARASA OPILLY.....APPLICANT/INTENDED PLAINTIFF

RULING

The Plaintiff, Florence Nyabeta Opili, the respondent in this application to strike out, filed an Originating Summons dated 1.3.2006, seeking several reliefs including the relief that she be registered as the proprietor of a parcel of land known as L.R. No.Kimilili/Sikhendu/632, measuring 4.5 acres under the principle of adverse possession.

After the Respondent/Defendant had filed his replying affidavit and apparently the pleadings were closed, the Respondent then filed a Chamber Summons under which he sought that the Originating Summons be struck out mainly on the grounds that the suit is Res Judicata Land Case No 25 of 2003 He also sought that the Originating Summons is defective and filed in contravention of the law. Other grounds for seeking the striking out included those that the limitation period of 12 years had not elapsed and that the plaintiffs are guilty of non-disclosure of material facts.

I have carefully perused the record of the main application and this application. Points raised for seeking to strike out the Originating Summons are clearly contentious. There is no agreement on the basic facts which would lead to the application of the law relevant to striking out. This calls for an opportunity to obtain tested facts which can only be availed after a full hearing of the main application. That is to say, it would save court's and parties' time and costs if the issues raised in the application for striking out, are consolidated with those in the main application and then agitated together all at the same time.

I make orders to that effect. Dated and Delivered at Bungoma this 10th day of October 2011.

D.A. ONYANCHA
J U D G E