



**Beja & 18 others v Hassanali & another (Civil Suit 331 of 2010)
[2022] KEELC 3989 (KLR) (20 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3989 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT 331 OF 2010**

M SILA, J

JULY 20, 2022

BETWEEN

HAMISI BEJA & 18 OTHERS PLAINTIFF

AND

KARIM MOHAMED HASSANALI & ANOTHER DEFENDANT

RULING

1. This suit was commenced by way of an originating summons filed in the year 2010. The suit was filed by 19 persons claiming title to the land parcel No 486/V/MN (the suit land) through the doctrine of adverse possession. The land is registered in the names of the 1st and 2nd defendants (hereinafter referred to as the respondents). The suit proceeded for hearing and judgment was delivered on February 15, 2019. In the judgment the court only upheld the case of four of the nineteen plaintiffs. Those successful were the 2nd, 10th, 14th and 18th plaintiffs (referred to herein as the applicants). In the judgment, the court apportioned the land as follows :-
 - 2nd plaintiff (Bembeyu Kuri) – 10 acres
 - 10th plaintiff (Charo Kalume Gonah) – 4 acres
 - 14th plaintiff (Mwamtu Ngale Besaha) – 4 acres
 - 18th plaintiff (Keya Chimbugua) – 8 acres
2. The whole of the land is 178 acres and it therefore needs to be subdivided in order to carve out the above portions to the applicants. The applicants have previously complained that the respondents have failed to submit a subdivision plan. They indeed filed an application seeking an order to compel the 1st



respondent to submit to court the surveyor's report and subdivision plan and share it with them for approval. On this, I delivered ruling on 4 May 2022 where I *inter alia* ordered as follows :-

- (i) The respondents are hereby given 30 days to present their proposed subdivision plan for approval or otherwise by the court.
 - (ii) That if no subdivision plan is filed and served by the respondents within 30 days as directed above, the applicants are at liberty to engage a surveyor, and proceed to prepare their own subdivision plan and present it to court for approval, or otherwise, as the court may direct.
3. On June 6, 2022, the respondents filed an application seeking an extension of one month to comply with the order (i) above. On June 9, 2022, I gave the respondents 14 more days to present to court their proposed subdivision plan and also share it with the applicants. On June 16, 2022, the respondents filed an affidavit sworn by Karim Mohamed Hassanali, the 1st respondent, where he deposed that they have set in motion a process to procure the subdivision plans but the same is being dragged by the County Government of Kilifi. He annexed a draft plan dated June 11, 2021. The applicants dispute this plan and have given their reasons in an affidavit sworn by Keya Chimbugua, the 18th plaintiff. She avers that the proposed plan *inter alia* disregards where their homesteads are located. She has annexed a subdivision plan which she contends was initially agreed by all parties after a joint survey.
4. It appears to me as if the two parties cannot agree on a subdivision plan. Given that position, I make the following order :-
 - (i) That the Coast Regional Surveyor and the Coast Regional Physical Planner, to proceed to the land parcel MN/VI/486, identify the location of the ground occupied by the 2nd, 10th, 14th and 18th plaintiffs, and carve out for them the areas of 10, 4, 4, and 8 acres respectively, as given in the judgment.
 - (ii) That the two officers to present their findings to this court for this court to consider adopting the same.
5. I also issue an order barring any approval of the subdivision plan presented by the respondents.
6. The costs of this exercise to be shared by the parties, and if any one party considers to pay so as to expedite the process, the same be paid back by the other promptly upon notification and no later than 14 days from such notification.
7. Orders accordingly.

DATED AND DELIVERED THIS 20TH DAY OF JULY 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT MOMBASA

