

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 193 of 2009

MUTUKU MUTINGA 1ST APPLICANT

GLORIA JEAN MUTINGAA 2ND APPLICANT

AND

JORETH LIMITED 1ST RESPONDENT

THOME FARMERS NO.5 LIMITED 2ND RESPONDENT

JUSTIN MIANO KABUIKO 3RD RESPONDENT

REBECA NJERI MIANO 4TH RESPONDENT

RULING

The applicants herein instituted a suit by way of Originating Summons under Order 36 rule 3D of the Civil Procedure Rules against the 1st respondent claiming ownership of some properties by way of adverse possession. Subsequently, the Originating Summons was amended to include the 2nd, 3rd and 4th respondents.

This claim was resisted by all the respondents herein who filed affidavits in answer thereto.

I took up the matter from my predecessors after some directions had been given to the effect that the parties address the Originating Summons by way of affidavit evidence.

Thereafter, the court made orders that written submissions be filed within a specified period. When the said orders were being made, there was not on record an application for directions by any of the parties herein as provided under the rules. (see Order XXXVI rule 8A).

The order was not shown to be by consent but the counsel appearing for the respective parties herein having filed submissions in compliance with the said order, must have consented thereto.

I have read the record before me. With profound respect to my predecessor and counsel appearing herein, I have not been able to resolve the issues by reading and/or analyzing the contents of the affidavits herein. I have noted with respect that there are issues that have been raised in the affidavits which require oral evidence to be adduced and subjected to cross examination so that the interests of the parties herein are properly addressed.

If I were to proceed by way of affidavit evidence as recorded in the order of 27th October, 2009, this may not resolve the issues. Accordingly, I find that no substantive ruling can flow from the material before me as at this point. I direct that oral evidence shall be adduced by all parties herein on a date to be agreed upon and if need be, the submissions already filed may be used as the final submissions after such evidence has been recorded.

Orders accordingly.

Dated, signed and delivered at Nairobi this 15th day of April, 2010.

A. MBOGHOLI MSAGHA

JUDGE