



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Miscellaneous Application 585 of 2005

**IN THE MATTER OF: THE PARCELS OF LAND KNOWN AS PLOT NOS.
MOMBASA/MN/III/112 AND L.R. NO. MN/111/1111**

AND

IN THE MATTER OF: THE LIMITATIONS OF ACTIONS ACT CAP. 22 LAWS OF KENYA

BETWEEN

MWINYI HAMISI ALI.....PLAINTIFF

VERSUS

1. MIKE MAINA

2. FLYOVER INVESTMENTS LIMITED

3. CAUSEWAY ENTERPRISES LIMITED.....DEFENDANTS

RULING

On 17th May, 2006, Maraga J. delivered himself as follows:-

“As already stated the plaintiff admits that some of the Interested Parties have lived in his vicinity for a long time. He however, contends that they have never occupied any part of the suit pieces of land. He sees their applications as going to confuse issues and in particular his claim to the suit pieces

of land. The Interested Parties on their part claim that they have, with the plaintiff been occupying the suit pieces of land as well as the adjoining large piece of land of which the suit pieces of land are only but portions. They do not therefore want the plaintiff to be registered as the owner of the suit pieces of land to their exclusion.

These are contentious issues which I cannot decide in an application like this without hearing evidence from the parties. In the circumstances, I allow the Interested Parties' said applications and order that they are hereby enjoined in these proceedings. They should file their pleadings by way of affidavits, if any, within fifteen (15) days."

Pursuant to Maraga J's order, Gladys Riziki Nyamawi filed a replying affidavit on her own behalf and on that of the other interested parties on 31st May, 2006. In it she deponed, *inter alia*, that the Interested Parties and 339 families have been residing on L.R. Nos. 334/III/MN and 324/III/MN for a period of over 30 years; that there are no such plots as Mombasa/MN/III/III2 and Mombasa/MN/III/III3 and that the plaintiff is misrepresenting facts that the two plots namely 111/III1 and MN/III/III3 do exist which is not the position from Lands office.

I have also seen another affidavit by another Interested Party, Chengo Nguma Benguma, sworn on the same date in which he deponed, *inter alia*, that together with others over 401 they reside and carry out Agricultural and other activities on Titles 324/III/M.N and 331/III/MN which lands encompass the alleged titles 1111/III/MN and 1112/III/MN which are the subject matter of the suit herein.

So, the interested parties are legitimately joined in these proceedings by an order of the court and have duly filed their pleadings as ordered by Maraga J. Hearing subsequently commenced on 7th November, 2007.

At the hearing of this application by the 2nd and 3rd defendants, counsel for the plaintiffs almost casually submitted that the interested parties had not been served and they did not know what was going on.

I perused the file, and note that there is indeed no evidence that the interested parties were served. The application itself does not indicate that it was intended to be served upon the interested parties. In view of their claims over the suit titles, the omission to serve them was fatal. In the premises, this application is incompetent and is struck out with costs to the plaintiff.

Order accordingly.

DATED AND DELIVERED AT MOMBASA THIS 16TH DAY OF SEPTEMBER 2010.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mr. Chakera holding brief for Mr. Mutubia for the 2nd Defendant and Mr. Akanga holding brief for Mr. Gikandi for the Plaintiff.

F. AZANGALALA

JUDGE

16TH SEPTEMBER 2010