



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL SUIT 317 OF 2006

STEPHEN NJAU NJOROGE

RICHARD GICHINI NJOROGE

JAMES NJOROGE NJAU

JANE NYAMBURA KINYANJUI

JOSEPH MUCHEKE

MUCHENE NJOROGE

CECILIA NDURUKA NJAU

FRED NJUKU NJAU.....PLAINTIFFS

VERSUS

LILIAN WAIRIMU NGATHO..... 1ST DEFENDANT

ELIZABETH MURUNGARI NJOROGE..... 2ND DEFENDANT

JUDGMENT

I. Background Case

1. The subject of this main suit is for adverse possession. The eight plaintiffs claim they are entitled to the land parcel LR.Kiambaa/Waguthu 385.
2. They filed an original summon against the defendants. The defendant filed an application that is a subject of this ruling that the Originating Summons offends Order XXXVI r 3 D Civil Procedure Rules.
3. This order requires that any claim for adverse possession that is filed under an Originating Summons and or a claim for ownership must contain an extract of the land title. This was not done in this Originating Summons. There is a mandatory of the law that the Originating Summons be struck out.
4. In reply the respondents/ plaintiff stated that there is a related case Hccc 972/06 Originating Summons which consolidates these two suits. I do not have sight of this case but there has endorsed in this file

similar rulings in the subsequent file on interlocutory order.

II. Findings

5. Whereas the findings are said that

Order c XXXVI r 3 D has not been complied with which orders are mandatory.

6. Whereas the suit is said to be consolidated, I hereby rule that the issue raised herein be raised in the main suit at the stage of hearing on the grounds that file Hccc972/06 is not readily available for perusal before this court.

7. The costs will be in the cause.

DATED THIS 29TH DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

T.W. Murage instructed by T. Murage & Co. Advocates for the plaintiff/applicant – present

J.W. Kimiti instructed by J.W. Kimiti & Co. Advocates for the defendant/Respondent