



Nyawa & another v Muhidin; Mwambire & 15 others (Interested Parties) (Environment & Land Case 198 of 2006) [2025] KEELC 4378 (KLR) (11 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4378 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 198 OF 2006**

**SM KIBUNJA, J
JUNE 11, 2025**

BETWEEN

KATANA VUTO NYAWA PLAINTIFF

AND

MASTER VUTOH KATANA NYAWA INTENDED PLAINTIFF

AND

BAI BIN OMAR MUHIDIN DEFENDANT

AND

KAZUNGU KARISA MWAMBIRE INTERESTED PARTY

**SAMUEL MUTURI MWAURA & 14 OTHERS & 14 OTHERS & 14
OTHERS & 14 OTHERS & 14 OTHERS & 14 OTHERS & 14**

OTHERS INTERESTED PARTY

RULING

1. Kazungu Karisa Mwambire & 14 Others filed the notice of motion dated the 20th August 2021 seeking for the suit to be re-opened, the ruling of 23rd July 2009 be set aside and they be joined as plaintiffs in the suit. The application is premised on the six (6) grounds on its face and supported by the affidavit sworn by Kazungu Karisa Mwambire, the 1st Applicant, on the 20th August 2021. It is their case *inter alia* that the applicants are beneficial owners of the suit property but the plaintiff secretly obtained judgement vesting the land to him; that the plaintiff was to hold the suit property in trust for the other parties claiming interest concurrently with him; that instead, the plaintiff has subdivided the land and is selling off portions without regard to the applicants' interests and hence this application.
2. The application dated 20th August 2021 is opposed by Samuel Muturi Mwaura, 16th applicant, through his replying affidavit sworn on the 11th December 2024, inter alia deposing that when he bought the



suit property, the plaintiff was the only one in occupation; that the plaintiff had not secretly obtained registration with the suit property as court proceedings are public records; that had the 1st to 15th applicants been residing on the suit land as they claim, they would have known when he bought the land, as he took possession and built a mabati house; that the said applicants are not in occupation of the land, and are trying to use the court process to be recognised as squatters; that the said applicants had filed Mombasa CMCC No. E662 of 2021 – *Julius Chimwenga Ngoro & 15 Others v Samuel Muturi Mwaura*, in which the 1st applicant herein was the 5th applicant, and later withdrew it after the court made a site visit and found they were not in occupation; that the applicants had on 3rd July 2024 attempted to invade the land and damaged part of the chain link fence, but were stopped by his security guards and their application should not be allowed.

3. Samuel Muturi Mwaura, the 16th applicant, filed the notice of motion dated the 11th July 2024, seeking to be joined as an interested party and for leave to file a replying affidavit opposing the application dated 28th August 2021. The application is based on the nine (9) grounds on its face and supported by the affidavit of Samuel Muturi Mwaura, 16th applicant, sworn on the 11th July 2024, *inter alia* deposing that he purchased the suit property from the plaintiff in 2009, took possession and fenced it; that he subdivided it to parcels 22014 to 22045 and the application dated 28th August 2021 will affect him directly as the plaintiff no longer has interests over the land; that he got to know of the application dated 28th August 2021 after being served through whatsapp; that unless his application is granted, he will suffer irreparable loss through losing his investments on the suit property.
4. Master Vutoh Katana Nyawa, applicant, filed the notice of motion dated the 3rd October 2024 seeking to be substituted for plaintiff. The application is based on the three (3) grounds on its face and supported by the affidavit of Master Vutoh Katana Nyawa, the applicant, sworn on the 3rd October 2024, *inter alia* deposing that he is the son of the plaintiff, who died on 1st December 2023; that he has obtained Limited Grant of Letters of Administration Ad Litem, in Mombasa CM *Misc. Succ. Cause No. E115 of 2024*, and he should be substituted for the plaintiff for the suit to proceed further.
5. The application dated 3rd October 2024 is opposed by Samuel Muturi Mwaura, the applicant, through his replying affidavit sworn on the 11th December 2024, *inter alia* deposing that the suit had been prosecuted to completion and there was nothing more to be litigated, that would require the deceased plaintiff to be substituted; that the applicant has no subsisting interest over the suit property that the plaintiff sold to him in 2009, when applicant was a minor.
6. The court issued directions on service of the applications, filing and exchanging replies and submissions within the given timelines on the 15th July 2024 and 20th November 2024. The learned counsel for the 16th Applicant is the only one who filed submissions dated 26th February 2025, in support of their application dated 11th July 2024, which the court has considered.
7. The issues for the court's determinations on the three applications are as follows:
 - a. Whether the 1st to 15th and 16th applicants have met the threshold for joinder in this suit.
 - b. Whether the 1st to 15th applicants have made a reasonable case for the setting aside of the ruling delivered on 23rd July 2009.
 - c. Whether the applicant has met the threshold for substitution for the deceased plaintiff.
 - d. Who pays the costs?



8. The court has carefully considered the grounds on each of the applications, affidavit evidence filed, submission by the 16th applicant's counsel, superior courts decisions cited, the record and come to the following determinations:

- a. This suit was commenced by Katana Vuto Nyawa against Bai Bin Omar Muhidin through the originating summons dated the 24th August 2006, filed on 1st September 2006. The plaintiff failed to get the defendant for physical service and moved the court through the chamber summons dated 22nd June 2007 for leave to effect service through a newspaper advertisement. The application was heard and granted on 22nd February 2008. The advertisement was carried in the Daily Nation Newspaper of 6th March 2008, but no appearance was filed. The suit was heard on the 18th February 2009 and vide the judgement/ruling delivered on 23rd July 2009, the court *inter alia* held that:

“..... I have already stated that the evidence tendered clearly shows that the applicant has been in occupation of plot no. 342/1/MN for over 46 years. It would appear from the annexure that the applicant has had peaceful occupation of the suit premises.

In the end I am convinced that the applicant was entitled to invoke the doctrine of adverse possession. Consequently I hereby declare Katana Vuto Nyawa to have acquired plot No. 342/1/MN by adverse possession. The Commissioner of Lands and or the Land Registrar is hereby directed to alter the register by cancelling the name of Bai Bin Omar Mohidin and in its place to insert the name of Katana Vuto Nyawa.....”

The decree was thereafter issued on the 24th August 2009. That the fact that the suit was advertised in the newspaper makes the claim by the 1st to 15th applicants' that the plaintiff had secretly filed the suit obtaining judgement in his favour to be without basis.

- b. Samuel Muturi Mwaura, the applicant in the application dated 11th July 2024 has annexed copy of title to the suit property evincing registration of the plaintiff as proprietor as per the court order, subsequent transfer to him, subdivision to 22014 to 22045 and transfer of some of the parcels to third parties. The contents of the said annexure has not been disputed, or rebutted by any of the other applicants, and the court takes it as uncontested. The third parties to whom some of the subdivisions have evidently been transferred to have not been sought to be joined in this proceedings, and yet orders to set aside the ruling of 23rd July 2009 would adversely affect their interests, contrary to their constitutional right to be heard.
- c. From the certificate of death number 1797133 issued on 23rd July 2024 that is annexed to the affidavit in support of the application dated 3rd October 2024, the plaintiff died on the 1st December 2023. The application for substituting the deceased was filed before the lapse of one year and is therefore properly before the court. The plaintiff's death has not been challenged, and the 16th applicant has indicated knowledge of the same. That as this suit was heard and determined on 23rd July 2009, which is almost sixteen (16) years ago, and there being no issue remaining for the plaintiff to litigate over that would require his substitution, I find the application dated the 3rd October 2024 to be without merit.
- d. Turning to the application dated 20th August 2021 by the 1st to 15th applicants, the court has already made a finding that contrary to their claim that the plaintiff had secretly filed the suit and obtained judgement to be registered as the owner of the suit property, that cannot be true



as the defendant had been served through an advertisement in the Daily Nation which is a newspaper with a national circulation. That further, the 16th applicant has disputed that there were other persons in occupation of the suit property when he took possession and fenced it after buying it from the plaintiff, now deceased, in 2009. The 16th applicant's contention that the 1st to 15th applicants had filed another suit over the suit property, being Mombasa CMCC No. E662 of 2021 – *Julius Chimwenga Ngoro & 15 Others v Samuel Muturi Mwaura*, that was subsequently withdrawn after a locus visit found they were not in occupation has not been rebutted. The application dated 20th August 2021, can only be taken as the applicants' attempt to have a second bite after their failed attempt through the matter filed before the lower court. The application is without merit.

- e. Having found no merit in the joinder and substitution applications dated 20th August 2021 and 3rd October 2024, I find the 16th applicant's application dated the 11th July 2024, though reasonable would serve no purpose as there is no pending litigation in this suit to necessitate his joinder to protect his interests over the suit property. Without prejudice to the rights of parties to move the court as appropriate, any onslaught over the suit property not involving the parties to this suit that may arise can be dealt with through fresh litigation.
 - f. That under section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the events unless the court for good cause orders otherwise. In the three applications, the applicants will bear their own costs.
9. Flowing from the above determinations, the court finds and orders as follows on the three applications:
- a. That the notices of motion dated the 20th August 2021, 11th July 2024 and 3rd October 2024 by the 1st to 15th Applicants, 16th Applicant and Applicant respectively are without merit and are dismissed.
 - b. The applicants to meet their own costs to their respective applications.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 11TH DAY OF JUNE 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiff/applicant : M/s Barayan

Defendant : No appearance

1st to 15th Applicants : No appearance

16th Applicant : No appearance

Shitemi-court Assistant.

S. M. Kibunja, J.

ELC MOMBASA.

