



Akelo & 3 others v Oranga (Enviromental and Land Originating Summons E008 of 2023) [2024] KEELC 6522 (KLR) (7 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6522 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2023**

GMA ONGONDO, J

OCTOBER 7, 2024

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT

AND

IN THE MATTER OF LAND PARCEL REFERENCE NO. CENTRAL KASIPUL/KAMUMA/59

BETWEEN

**FELGONA AKELO 1ST APPLICANT
JOSEPH OPAP OCHIENG 2ND APPLICANT
JOEL OINDO OCHIENG 3RD APPLICANT
JOHN ARUNDA OCHIENG 4TH APPLICANT**

AND

EUNICE AUMA ORANGA RESPONDENT

JUDGMENT

1. By an originating summons dated 20th April 2023 generated under, inter alia, sections 17, 18, 37 and 38 of the Limitation of Actions Act Chapter 22 Laws of Kenya, the applicants/plaintiffs through Wanza Kivindu and Company Advocates, claim to have acquired the suit land Reference number Central Kasipul/Kamuma/59 measuring approximately Three Decimal Six hectares (3.6 Ha) in area, by way of adverse possession.
2. The respondent/defendant through Muma Nyagaka and Company Advocates, denied the plaintiffs' claim in her replying affidavit of forty-two paragraphs sworn on 29th May 2023. She averred, inter alia, that there were previous attempts before the area chief, to resolve the issue of the 2nd plaintiff's occupation of the section of the suit land.



3. The hearing of the suit has reached an advanced stage. Indeed, the 1st plaintiff, 2nd plaintiff, 3rd plaintiff, Isaiah Oyoo Opap, Elijah Midigo Ochieng, John Matunga Mireri and Joseph Osimbo being PW1, PW2, PW3, PW4, PW5, PW6 and PW7 respectively as well as the defendant (DW1) and Samuel Ouko (DW2), testified herein.
4. On 9th July 2024, Ms Kivindu learned counsel for the defendant and Mr Muma learned counsel for the plaintiffs informed the court that they were in agreement that the parties had opted to explore Court Annexed Mediation (CAM herein) in this matter.
5. Accordingly, the court referred the suit to CAM under Article 159 (2) (c) of the Constitution of Kenya 2010 and CAM Rules 2022.
6. It is noteworthy that there is a settlement agreement dated 12th September 2024 signed by the parties and the Mediator Roselyn A Okal as well as the Co-Mediator, Jane A Ayola in respect of this suit.
7. In that regard, the issues for determination herein are;
 - a. Has the settlement agreement disposed of the suit?
 - b. Who shall bear the costs of the suit?
8. It is borne in mind that the settlement agreement is two-paged containing six paragraphs to the effect that;
 - a. The process of making new title deeds for the suit land shall begin in January 2025.
 - b. The defendant shall bear the costs related to the process of acquiring new title deeds.
 - c. The four people who are currently tilling part of the suit land given to the defendant to use it until the end of 2025 on lease basis.
 - d. Four acres of the suit land be given to the defendant, Eunice Ouma Oranga shall exclude any homesteads or graveyards associated with the 2nd plaintiff and family.
9. It is not in dispute that the parties had attempted to resolve their issues through the area chief as disclosed in paragraphs 10, 13, 14 and 19 of the defendant's replying affidavit herein.
10. Mr Muma learned counsel for the defendant has urged the court to adopt the settlement agreement accordingly for enforcement as the judgment herein.
11. Ms Kivindu for the plaintiffs has affirmed the position taken by the defendant's counsel.
12. It is common ground that the settlement agreement be adopted in entirety as the judgment of this court. In the premises, the settlement agreement, be and is hereby adopted accordingly.
13. The parties through their respective counsel are hereby applauded for having embraced CAM under Article 159 (2) (c) of the Constitution and CAM Rules 2022 (supra) in the amicable settlement of the instant matter.
14. Thus, judgment is hereby entered in terms of the settlement agreement produced through the CAM mechanism as stated in paragraph 8 (a) (b) (c) and (d) hereinabove.
15. The parties to bear their own costs of this suit.
16. It is so ordered.

DATED AND DELIVERED AT HOMA BAY THIS 7TH DAY OF OCTOBER 2024.



GEORGE M. A. ONGONDO

JUDGE

PRESENT;

Ms. Kivindu learned counsel for the plaintiffs

Mr. Muma learned counsel for the defendant

Mr. T Luanga, court assistant

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