



**Sumba (Suing as the legal representative of the Estate of Boniface Sumba Oracha) v El-Eyyan
(Environment & Land Case 214 of 2016) [2023] KEELC 20544 (KLR) (11 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20544 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 214 OF 2016
SM KIBUNJA, J
OCTOBER 11, 2023**

BETWEEN

**NICHOLAS ODERA SUMBA PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF BONIFACE
SUMBA ORACHA**

AND

SALEH BIN SALIM ALI BIN EL-EYYAN DEFENDANT

RULING

1. The plaintiff seeks, vide his application dated the February 23, 2023, for the varying/reviewing of the orders in the judgement delivered on April 13, 2022 so as to direct the Land Registrar, Mombasa to issue a title deed in the name of the plaintiff in respect of parcel number 1414/VI/MN [CR NO 11108] Mombasa, pursuant to having been registered as the proprietor of the said parcel of land under the court's decree. The application is based on the seven grounds on its face marked (a) to (g) and supported by the affidavit sworn by Nicholas Odera Sumba, the plaintiff, on the February 23, 2023 inter alia deposing that in the judgement delivered on the April 3, 2022, the court declared the late Boniface Sumba Oracha to have acquired title to the suit land by adverse possession, and further ordered the Land Registrar, Mombasa, to register the plaintiff as proprietor in his capacity as the legal representative; that a decree was issued on May 5, 2022 and the Land Registrar registered him as proprietor in his capacity as the legal representative; that the Land Registrar has declined to issue a title deed requiring that a specific order be obtained to that effect and hence this application
2. The record shows the defendant never entered appearance despite service having been done through advertisement.
3. The only issue for the court's determination is whether the plaintiff has met the threshold for the orders of April 13, 2022 to be varied and or reviewed as sought.



4. The court has carefully considered the grounds on the application, the affidavit evidence, the record and come to the following findings:
 - a. That going by the prayers sought through the originating summons dated the August 2, 2016 and filed on August 4, 2016 the plaintiff had sought for declaration that the plaintiff is the proprietor of the suit land; that the plaintiff is entitled to be registered as the owner of the said land; declaration that the suit land had been acquired by the plaintiff by way of adverse possession and an order that the defendant pays the costs of the suit. That all the prayers listed as 1 to 3 were granted as phrased in paragraph 6 of the judgement delivered on the April 13, 2022, but the prayer for cost was not granted as seen in paragraph 7 of the said judgement.
 - b. As seen above, the plaintiff's pleadings did not contain a prayer that upon being registered as proprietor, in his capacity as legal representative of the suit land acquired through adverse possession, he be issued with a title deed by the Land Registrar. That probably explains why the court could not have considered issuing such an order in the absence of a specific prayer to that effect, as parties are bound by their pleadings.
 - c. The copy of certificate of postal search dated the August 15, 2022 over the suit property that is annexed to the supporting affidavit confirms that Nicholas Odera Sumba, the plaintiff, has been registered as the owner of the said land in his capacity as the legal representative. The matter is now at the execution stage, and I find no prejudice would be visited upon the defendant or any other person if the order sought in the application is granted.
 - d. That just like it was ordered in the judgment of the April 13, 2022 on the issue of costs, the plaintiff is to bear his own costs in the application notwithstanding the provisions of section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya.
5. That in view of the foregoing determinations, the court finds merit in the application and orders as follows:
 - a. That the Land Registrar Mombasa to issue the relevant document of title in respect of land parcel No 1414/V1/MN [CR NO 111008] Mombasa, to Nicholas Odera Sumba, Legal Representative of the Estate of the late Boniface Sumba Oracha, upon the usual application and statutory fees if any, being made.
 - b. That the plaintiff to bear his own costs in the application.

DATED AND VIRTUALLY DELIVERED THIS 11th DAY OF OCTOBER 2023.

SM Kibunja, J

ELC MOMBASA.

IN THE PRESENCE OF:

PLAINTIFF : No appearance

DEFENDANT : M/s Wambui for Ngonze Advocate.

COURT ASSISTANT – WILSON.

S. M. Kibunja, J.

ELC MOMBASA.

ELC NO. 214 OF 2016 – RULING Page 2 of 2**

