



Hamisi Beja & 18 Others v Karim Mohamed Hassanali & Others (Environment & Land Case 331 of 2010) [2022] KEELC 3516 (KLR) (4 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3516 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 331 OF 2010**

M SILA, J

MAY 4, 2022

BETWEEN

HAMISI BEJA & 18 OTHERS PLAINTIFF

AND

KARIM MOHAMED HASSANALI & OTHERS DEFENDANT

RULING

1. There are two applications before me both filed by the 2nd, 10th, 14th and 18th plaintiffs/deed holders. The first is the application dated 27 September 2019 and the second is that dated 22 July 2021. No reply has been filed to both applications.
2. In the application dated 27 September 2019, the applicants want orders to have the Deputy Registrar execute documents on behalf of the applicants, inclusive of mutation and transfer forms and have four separate titles issued to the applicants for 10 acres, 4 acres, 4 acres and 8 acres respectively, out of the land parcel No. 486/V/MN (CR No. 8728). The applicants aver that they have a decree in their favour for these portions of land ; that they met with the defendants and a subdivision process started; that a subdivision was agreed upon; that contrary to what was agreed, the defendants went and altered the boundaries. It seems that after this application was filed, the parties entered into some negotiations and agreed to take out the application from hearing. Subsequently, the application dated 22 July 2021 was filed. From what I can discern, the principal order is to have the 1st defendant submit to court the surveyor's report and subdivision plan that they are carrying out pursuant to the judgment and share it with the applicants for approval. They also seek an order that if the subdivision process has not been carried out, then the deed holders to commence their own subdivision process and registration, and for the defendants to be ordered to deposit the original title deed in court.
3. As I mentioned, the defendants did not file anything to oppose the motion.
4. I have gone through the applications and the record of the court.



5. This suit was commenced through an Originating Summons filed in the year 2010. There were 19 plaintiffs who were claiming to be entitled to the land parcel No. 486/V/MN (the suit land) by way of adverse possession which land is registered in the names of the 1st and 2nd defendants/respondents. The case was heard and judgment delivered on 15 February 2019. Out of the 19 plaintiffs, only 4 were successful, and these constitute the applicants. The court allowed their claim to the suit land as follows :-
- 2nd plaintiff – 10 acres
10th plaintiff- 4 acres
14th plaintiff- 4 acres
18th plaintiff – 8 acres
6. It goes without saying that the suit land needs to be subdivided so that the judgment can be effected. It will be seen that in the first application, the applicants contend that they had agreed on a subdivision plan but which the respondents later changed. They complain that the changed subdivision plan does not conform to their occupied portions. In the second application, they wish to have the respondents present the subdivision plan, and in default, they be allowed to subdivide the land.
7. Ms. Memia who appeared for the respondents, made submissions that the problem is with the Land Registrar, and not the respondents. That submission cannot be taken seriously. If the respondents wished to oppose the application on that ground, they needed to file a replying affidavit. I cannot accept submissions from the bar that allude to matters of fact not deposed in a replying affidavit.
8. I think the applicants have made out a case for an order for the respondents to table and present their subdivision plan, and if they do not do so, then the applicants to proceed to prepare one and table it to court for the approval of the court before the land can be formally subdivided.
9. I therefore order as follows :-
- i. The respondents are hereby given 30 days to present their proposed subdivision plan for approval or otherwise by the court.
 - ii. That if no subdivision plan is filed and served by the respondents within 30 days as directed above, the applicants are at liberty to engage a surveyor, and proceed to prepare their own subdivision plan and present it to court for approval, or otherwise, as the court may direct.
 - iii. For the moment, I will not make any additional orders for it is imperative that first, a subdivision plan be agreed by the parties and/or be approved by the court, before any further step may be taken in execution of the decree.
 - iv. The applicants will have the costs of the two applications.

Orders accordingly.

DATED AND DELIVERED THIS 4 DAY OF MAY 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA

