



**Safari Mweri Mangi & 2 Others v Estate Of Hamisi Mwinyikai Ramadhan & Others (Environment and Land Case Civil Suit 68 of 2020) [2022] KEELC 3545 (KLR) (4 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3545 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE CIVIL SUIT 68 OF 2020**

**M SILA, J**

**MAY 4, 2022**

**BETWEEN**

**SAFARI MWERI MANGI & 2 OTHERS ..... APPLICANT**

**AND**

**ESTATE OF HAMISI MWINYIKAI RAMADHAN & OTHERS ... RESPONDENT**

**RULING**

(Application seeking to join persons as interested parties and seeking further orders of injunction against them; suit being one for adverse possession; the title sought already subdivided and sold to other persons including those sought to be joined; no purpose in joining the persons as they have no interest in the title claimed by the plaintiffs; if plaintiffs have any claim on the titles they hold, the avenue is to file a fresh suit for consideration; injunction can only be sought against a party to the case; since the claim for joinder fails, the prayer for injunction collapses; application dismissed with costs)

1. The application before me is that dated February 15, 2022 filed by the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs. It seeks the following two substantive orders which are prayers 2 and 4 in the application being :-
  - (a) That Sheban Hare and Hassan Hamed be joined herein as the affected and/or interested parties respectively.
  - (b) That this Honourable Court be pleased to issue a temporary injunction restraining the affected/interested parties herein jointly and severally either by themselves, their agents, assignees, servants and/or third parties from building, developing, disposing, selling, claiming, transferring title and/or in any way dealing and/or interfering with the alleged sub-divisions allegedly occupied by the affected parties pending the hearing and determination of this suit.



### **The application is opposed.**

2. To put matters into context, this suit was filed by three plaintiffs on June 10, 2020. It is an Originating Summons claiming adverse possession to the land described as CR No. 4314/I/MN. Together with the suit, the plaintiffs filed an application for injunction. The 1<sup>st</sup> – 4<sup>th</sup> respondents filed a replying affidavit to the suit and to the application for injunction. Their position was that the claim of the applicants was baseless. They averred that the applicants had filed another case seeking title to the land, which case was dismissed. They added that part of the land has been subdivided and sold to other parties. I heard the application for injunction which I dismissed in a ruling delivered on 30 July 2020. I subsequently directed the case to proceed for hearing and the 3<sup>rd</sup> plaintiff has already testified in the case. I am made to understand that the order which dismissed their application for injunction was appealed against and the Court of Appeal struck out the application seeking stay pending hearing of that appeal. This application was later filed on February 15, 2022.
3. The application is based on the grounds that the defendants are subdividing the property and selling it to third parties in an attempt to defeat the plaintiff's claim. They aver that they are living on the property with their families and they face the threat of eviction. They state that the two persons they seek to join in this case are in the process of building and developing the land.
4. The 1<sup>st</sup> – 4<sup>th</sup> respondents have filed a replying affidavit sworn by Maryam Mwinyikai, the 3<sup>rd</sup> respondent. Inter alia, she has pointed out that the applicants had earlier filed an application for injunction which was dismissed and they filed an appeal to the Court of Appeal, and that they were denied an injunction pending hearing of the appeal. She has averred that the land was owned by their father, Hamisi Mwinyikai Ramadhan who died in the year 1989. A succession matter was filed and subsequently the land divided in favour of the beneficiaries of the estate who later sold their portions to third parties. The land was then subdivided so that they may get titles. She has annexed copies of sales agreements, transfers and new titles. She has deposed that what the applicants occupy is a small portion of the whole land while the rest of the land is owned by other persons. She has stated that if the injunction is allowed, other parties who are innocent will suffer damage.
5. One of the proposed interested parties, Hassan Hemed, swore a replying affidavit to oppose the motion. Inter alia, he deposed that the Plot CR No. 4314/I/MN (what is claimed in the case for adverse possession) was subdivided and it no longer exists. He purchased two of the subdivided plots being CR No. 62563 and 62564. He stated that the injunction sought cannot be granted as it is against a non-existent property.
6. I have taken note of the submissions made by counsel in supporting and opposing the motion. I take the following view :-
7. There are two issues herein. First is the proposed joinder of other parties to the case and secondly is the question of injunction. On the first issue, I observe that the plaintiffs seek title to land that they have described as title No.4314. The persons to sue are the title holders and nobody else, for adverse possession is a case against the holder of the title. It is not claimed in this suit that the persons sought to be joined are the title holders of this title No. 4314. It is therefore pointless to join them to the case. They cannot be said to be interested in the title No. 4314 because from the evidence tendered, it does not exist. In fact, I am hoping that the plaintiffs take cue from the affidavit evidence presented, and have a second look at their case, for if it is the position that the title they claim has already been subdivided and new subdivided titles issued to other parties, then it is difficult to see how their case of adverse possession will succeed, as the title they seek to have appears to be no longer in existence. The applicants have not within this application rebutted the assertion that the land is already subdivided.



If the plaintiffs wish to claim any subdivision of the mother title, then the proper avenue is to sue over that particular subdivision, and to sue the title holder of the subdivision. I see no basis for bringing in the persons sought to be joined in this application. As I have already pointed out they have no interest in the title claimed in this suit.

8. With the dismissal of the prayer for joinder, the prayer for injunction must collapse. It could only have been specifically aimed at the persons sought to be joined, for I had already dismissed the prayer for injunction against the existing defendants. Since the applicants have failed in their prayer for joinder, the prayer for injunction automatically falls by the wayside. You can only issue an injunction against a party to a case or their servants/agents. As mentioned, I had already dismissed the injunction application against the existing defendants and I cannot revisit that issue. The persons sought to be joined, independently own land, separate from the existing defendants herein. Unless they are sued directly, I do not see how the applicants can obtain an order of injunction against them.
9. It will be observed that I see no merit in this application. It is hereby dismissed with costs. For the avoidance of doubt, the interim orders issued pending hearing and determination of this application, are hereby vacated and set aside.
10. Orders accordingly.

**DATED AND DELIVERED THIS 4 DAY OF MAY 2022**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

AT MOMBASA

