



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUSIA

CIVIL CASE NO. 79 OF 2019 (O.S)

IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 22

AND

IN THE MATTER OF THE LAND REGISTRATION ACT (NO. 3 OF 2012 SEC. 108)

AND

IN THE MATTER OF THE REGISTERED LAND ACT (CHAPTER 300) (REPEALED)

AND

IN THE MATTER OF LR. NO. BUNYALA/BUKOMA/404

BETWEEN

EMANNUEL OKOTCHI OUNDO.....APPLICANT

VERSUS

BENEDICT MAKHULO

NICHOLAS MAKHULO.....RESPONDENTS

R U L I N G

1. For determination is the application dated 6th January 2020 under the provisions of Order 2 rule 15 of the Civil Procedure Rules. The defendants/applicants prays for orders;

1) The Originating Summons filed herein by the Applicant EMMANUEL OKOTCHI OUNDO be struck out on the ground that it discloses no reasonable cause of action against the Respondents and it is otherwise an abuse of the Court process.

2) Costs of the Originating Summons and of this Application be provided for.

2. The application is supported by the grounds listed on its face thus;

(i) The Respondents in the Originating Summons are not Administrators of the estate of the registered owner of the suit land i.e. BUNYALA/BUKOMA/404.

(ii) In view of the above the respondents in the Originating Summons are incapable in law, or carrying out the Orders that the Court might issue in respect of the land in question.

(iii) The respondents in the Originating Summons do not reside on the suit land and have no legal interest in the same.

3. The plaintiff/respondent opposed the application by filing the grounds of opposition dated 13th January 2020. He pleaded thus;

(a) That the application is frivolous and an abuse of the Court process.

(b) That the application is premature with no merit.

(c) That a land in dispute can only be determined by way of oral evidence and not in an application.

(d) That the application is spurious, a clear abuse of the Court process and ought to be dismissed with costs as it gives no reasonable grounds not is supported with any affidavit.

4. The defendants/applicants filed submissions in arguing the application on 18th February 2020 while the plaintiff filed nil submissions. It is the applicant's argument that they are not legally capable of defending the suit for want of capacity. The Originating Summons was taken out in respect of land title No. BUNYALA/BUKOMA/404. The plaintiff annexed a certified copy of the green card for the suit title which showed it is registered in the name of Marcela Makhulo. It is also indicated that the said Marcela is deceased.

5. In paragraph 7 of the affidavit in support of the Originating Summons, the plaintiff pleaded that the applicants took this land and registered it in their names. However there is nothing annexed to show that the suit title is indeed registered in the names of the defendants/applicants. Further the plaintiff has not pleaded that the defendants are the duly appointed administrators of the estate of Marcella Makhulo – deceased.

6. The grounds of opposition filed do not shed light in what capacity the defendants are being sued given that nothing has been exhibited to show that they own the suit title. Consequently in the absence of letters appointing the defendants as administrators as the registered owners of suit land, this case suffers misjoinder of parties. Evidence of appointment as administrators does not require to be proved by oral evidence but annexing the document itself or proceedings relating to such appointment.

7. I am therefore satisfied that the application is merited. The same is allowed with the result that the suit is struck out with costs to the defendants.

Ruling dated, signed and delivered at BUSIA this 21st day of July, 2020.

A. OMOLLO

JUDGE