



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 387 OF 2017

JOEL TITUS MUSYA.....PLAINTIFF

VERSUS

JOASH ADAMBA.....DEFENDANT

RULING

(Application to reinstate suit; suit marked as withdrawn pursuant to a notice of withdrawal of suit; notice filed by counsel not on record for the applicant; application allowed and suit reinstated)

1. The application before me is that dated 30 October 2019. It seeks orders for review of the orders made on 29 October 2019 and for the reinstatement of this suit.
2. To put matters into context, this suit was commenced through an Originating Summons filed on 23 October 2017 where the applicant sought orders that he be declared to have acquired title to the land parcel MN/I/3190 by way of adverse possession. The respondent entered appearance on 16 September 2018. On 8 February 2019, one Pamela Auma Ogola filed an application to be enjoined into the suit as an interested party. She contended that she is the one who has been in occupation of the suit land from the year 1998 and the one entitled to the land by way of adverse possession. On 30 January 2019, another application seeking joinder to the suit was filed by one Paul Ongidi Amolo. He also claimed that he is the one who has been in occupation of the suit land and the person entitled to the land by way of adverse possession. He disclosed in his application that he had filed his own suit being Mombasa ELC NO. 14 of 2019. On 19 March 2019, a similar application for joinder was filed by one Julius Ogogoh.
3. On 4 April 2019, there was filed a Notice of Withdrawal of Suit which stated that the applicant has wholly withdrawn/discontinued the suit.
4. When the matter came before me on 29 October 2019, and pursuant to the Notice of Withdrawal of Suit, I made the order that this suit is withdrawn and therefore the court file may be closed. It is this order which is sought to be reviewed.
5. It is the contention of the applicant that the Notice of Withdrawal of Suit was filed by M/s Obara & Obara Advocates, who are not on record for him, but on record for the plaintiff in the suit Mombasa ELC No. 14 of 2019. He has also pointed out that the notice indicates that it is for the suit Mombasa ELC No. 14 of 2019.
6. The application is not opposed.
7. I have looked again at the Notice of Withdrawal of Suit. It does cite the parties in this case but it mentions the case Mombasa ELC No. 14 of 2019. It is drawn by the law firm of M/s Obara & Obara Advocates, and I have confirmed from the record that the said law firm does not act for the applicant in this matter. The applicant is represented by the law firm of M/s Chala & Company Advocates. Given that position, the law firm of M/s Obara & Obara could not file a notice to withdraw this suit as they do not have instructions from the applicant. It is probable that the said law firm filed the notice of withdrawal of suit in the wrong file and cited the wrong parties as the said firm is on record for the applicant in the suit Mombasa ELC No. 14 of 2019.
8. In the circumstances, I do allow this application and set aside the orders of 29 October 2019 which marked this suit as withdrawn. The suit is thus reinstated.
9. I make no orders as to costs.
10. Orders accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 3rd day of March, 2020.

MUNYAO SILA,

JUDGE.

IN THE PRESENCE OF:

Ms Chala for the applicant.

No appearance for the other parties.

Court Assistant; David Koitamet.