



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO. 78 OF 2014**

**MOHAMED BWANA OBO ATHMAN & 24 OTHERS.....PLAINTIFFS**

**=VERSUS=**

**KENYA AIRPORTS AUTHORITY.....DEFENDANT**

**RULING**

1. What is before me is the Application by the Defendant dated 20<sup>th</sup> January, 2016.
2. In the Application, the Defendant/Applicant is seeking for the following orders:-
  - (a) **THAT this Honourable court be pleased to strike out the plaint in its entirety as it is a non starter and discloses no cause of action.**
  - (b) **THAT this Honourable Court be pleased to make such orders as it deems fit and convenient to meet the end of justice.**
  - (c) **THAT the costs of this application and the entire suit be awarded to the Applicant.**
3. The Application is premised on the grounds that the Respondent's suit is misguided, clothed in mischief and an abuse of the court process; that in its Ruling, this court confirmed that the Plaintiff's' suit cannot succeed and that the Defendant is the legal and beneficial owner of portion of land known as Portion No. 21 having been conferred with a grant on 14<sup>th</sup> June, 2002.
4. It is the Defendant's case that the Plaintiffs cannot adversely or under prescription, claim against he Defendant, which is a body wholly owned by the Government that the land in question is public land and that the suit is incompetent having been filed contrary to the provisions of Order 4 Rule 1(3) of the Civil Procedure Rules.
5. It is the Defendant's plea that in any case, the suit was filed before the lapse of 12 years hence the claim for adverse possession cannot arise.
6. In their Grounds of Opposition, the Plaintiffs averred that Section 13(1) and 2 (b) of the Kenya Airports Authority Act is relevant and material to this suit and that therefore the Plaintiffs have a triable issue.
7. The Plaintiffs averred that the Defendant's Application contradicts the overriding objectives under

Section 1A and B of the Civil Procedure Act and the judicial principles that are provided for under Article 159(2)(d) of the Constitution.

8. The Plaintiffs finally averred that the Application is premature because the Defence and Counterclaim were filed without the leave of the court.

9. The parties relied on the pleadings which are on record.

10. In their Plaint of 25<sup>th</sup> April, 2014, the Plaintiffs averred that they are the owners, occupiers and or beneficiaries of an interest in the suit property as provided for under Section 28 (e) and or (h) of the Land Registration Act; that they are entitled to the property having acquired the same by way of prescription and or adverse possession and that they have used the land since 1964 to date without interruption.

11. The Plaintiffs are seeking for a declaration that they are the owners of the suit property by prescription or adverse possession. In the alternative, the Plaintiffs are seeking for a declaration that the government should acquire portion number 21 Lamu from the Plaintiffs by compensating them.

12. The Defendant is seeking for an order to strike out the suit on the basis that it discloses no cause of action because the Plaintiff cannot succeed in law with a claim of adverse possession.

13. The grant in respect to the suit property has been annexed on the Defendant's Application.

14. The grant shows that the suit property was allocated to the Defendant by the government and was registered in its favour on 14<sup>th</sup> June, 2002.

15. Although it is true that land registered in favour of a state agency is defined as public land and that such land is not subject to the Limitation of Actions Act, the issue of how the grant was issued to the Defendant and whether the land in question was government land in the first place can only be dealt with conclusively after trial.

16. In any event, the Plaintiffs have also claimed in the alternative for compensation by the Defendant for the suit land.

17. The legality or otherwise of the Plaintiffs' prayer for compensation cannot be wished away at this stage considering that under Article 60(1) (e) of the Constitution, the Plaintiffs have a right to equitable access to land. The Plaintiffs should therefore be afforded an opportunity to ventilate the issue as to whether the actions by the Defendant to have them evicted from the suit property infringes on their rights to equitable access to land.

18. The Plaintiffs have also averred that in any event, the Defendant's Defence and Counterclaim was filed out of time. That issue will have to be determined by the Court at trial.

19. For those reasons, I dismiss the Defendant's Application dated 20<sup>th</sup> January, 2016 with costs.

Dated, signed and delivered in Malindi this 1<sup>st</sup> day of **July**, 2016.

**O. A. Angote**

**Judge**