



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA

CIVIL CASE NO. 315 OF 2000

BAJABER LIMITED.....PLAINTIFF

- V E R S U S -

KENYA REVENUE AUTHORITY.....DEFENDANT

COMMISSIONER OF LANDS.....3RD PARTY

RULING

[1] The defendant filed a Notice of Motion dated 22nd November, 2012 seeking for orders that the plaint filed on 28th June 2012 be struck out with costs. It asks for its counterclaim to be allowed as per prayers (a) (b) (f) and (g) with costs.

[2] The defendant firstly relied on the fact that the grants forming the subject matter of the suit parcel numbers section mainland north numbers 9592 and 9593 were revoked by Gazette Notice Number 6332 dated 6th June, 2011. That therefore the said revocation of the said grants removed the substratum of the suit rendering it frivolous incompetent baseless, scandalous and an abuse of the court process.

Secondly the applicant/defendant relied on the fact that the purported action against the defendant is time barred by virtue of the provisions of limitation of Action Act Chapter 22 of the Laws of Kenya in that the plaint makes a claim for trespass, yet the defendant and its predecessors have been in possession of the suit properties since 1975 a period of over 25 years before the institution of this suit.

[3] The plaintiff/respondent opposes this application. The respondents main grounds of opposition is that the said revocation was against land Title Mombasa North/1/9593 which was done on 8th June 2011 by the Registrar of Titles Mombasa. He argues that the Registrar is not vested with such powers by either the Constitution of Kenya or any other law. The plaintiff/respondent further argues that the said revocation was done in respect of Mombasa North/1/9592 and not 9593 and therefore striking out cannot succeed.

[4] I have carefully considered all the issues raised by the applicant in respect of striking out the suit. I have equally considered the reasons for the opposition of the application set out by the plaintiff/respondent. I have also carefully perused Kenya Gazette of 28th June 2011. The same only revokes Mainland North/1/9593. The suit properties in this case are Mainland North/1/9592 and 9593. It would then appear Plot no. 9592 has not been revoked. Striking out the suit on the ground of such revocation would therefore deal with both properties while one of them was not revoked.

[5] I need not go into the merits of whether the revocation was pursuant to the land or whether the suit properties were available for allocation or what is the law on striking out. All these issues shall be canvassed at the hearing of the suit. I am told that this suit is part heard. The prudent thing to do is to fix this suit down for hearing on merits. This will enable the real issue between the parties to be determined by the court. This application is dismissed with no order as to cost.

**Dated and delivered in open court at Mombasa this 5th day of June 2014.**

**S. MUKUNYA**

**JUDGE**

**5.6.2014**

Mr. Asige Advocate for the plaintiff/respondent

Mr. Ibrahim Advocate for the applicant.