



REPUBLIC OF KENYA



Ryoba & 4 others v Mwita & another (Environmental and Land Originating Summons E027 of 2019) [2025] KEELC 5131 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5131 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E027 OF 2019
FO NYAGAKA, J
JUNE 18, 2025**

BETWEEN

**FRANCIS CHACHA RYOBA 1ST PLAINTIFF
JOHN SINDA NGORO 2ND PLAINTIFF
JULIUS BATIROBA NGORO 3RD PLAINTIFF
JAMES NYANGI NGORO 4TH PLAINTIFF
GATI GORE CHACHA 5TH PLAINTIFF**

AND

**MUSA MAISORI MWITA 1ST DEFENDANT
FLORENCE KAGONYA MIJARA 2ND DEFENDANT**

RULING

1. By way of Notice of Motion dated 10/03/2025, the Applicants seek the following orders;
 1. Spent.
 2. There be issued an eviction order evicting the plaintiffs / respondents jointly and severally, their agents and or servants from LR. NO. Bukira/ Buhiringera/6X4 and or any subdivisions thereof.
 3. The OCS Kehancha Police Station to provide security during the eviction exercise.
 4. Costs of the application be provided for.
2. The Application is premised on the grounds on the face of it and the contents of the affidavit sworn by both the Applicants. The contents of the grounds are repeated in the Affidavit hence no need to restate them separately.



3. In their affidavit, the Applicants deposed that the Respondents filed the instant originating summons dated 03/04/2019 claiming legal legitimacy over various portions. The puisne judge found no merit in it. Further, that the suit was struck out vide the ruling dated and delivered on 19/02/2025. The deponents urged that there being no valid claim pending anywhere this application be allowed as a matter of urgent necessity to avoid further destructions on the ground.
4. The Applicant pointed out that the respondents have reverted to intrusion exercise by gradual invasion of L.R Bukira/ Buhiringera/6X4 with utter disregard of the obtaining position and therefore, the orders are necessary as the continued trespass and encroachment upon the suit property flies in the face of the known laws.
5. The Applicant filed submissions dated 27/04/2025. They laid out the background of the case and submitted that as the suit was struck out, it became clear that L.R Bukira/ Buhiringera/1X2 no longer existed since it had been subdivided pursuant to a Succession cause into new numbers; L.R Bukira/ Buhiringera/6X4 belonging to the Applicants and 605. Further, that as the court declined to cancel the land parcels, the instant application is inevitable for purposes of positioning the parties where they belong. He urged the court to allow the application as prayed.

Analysis & Disposition.

6. The issue for determination is whether the eviction orders against the Respondents should issue.
7. The Respondents initiated this suit claiming legal legitimacy over the parcel of land known as LR. NO. Bukira/ Buhiringera/6X4 vide the Originating Summons dated 03/04/2019. The matter proceeded for hearing and vide a decision delivered on 19/02/2025 this court struck out the Originating Summons with costs to the Respondent.
8. While one may be tempted to think that the decision conclusively determined the issue of ownership of the suit land by striking the suit out, it is far from the truth. The Originating Summons was lost for a legal technicality that did not entail analysis of the merits thereof. That is why the court “struck out” the Originating Summons. Striking out a matter or application is different from dismissing it.
9. Indeed, it is true that the defendants are the registered owners of the suit land. The claim by the Plaintiffs was that they had acquired the land by adverse possession yet they did not succeed to prove that on the merits because they failed to adhere to Order 37 Rule 7 of the Civil Procedure Rules, 2010. The provision is to the effect that for one to prove a claim for adverse possession he/she must annex an extract of (the Defendant’s) title to the land. The import of the provision is that the claimant ought to demonstrate that indeed the property exists and it is registered in the name of the defendant. This is a preliminary issue which a Court can decide at even at the pre trial stage and strike out a suit at that point if it does not comply with the law. Doing so does not determine the matter on merits.
10. In the instant matter, the Plaintiff’s suit was struck out for the reason, as stated above, that they did not annex the extract of title to the suit land to confirm who the registered owner was at the time of suit. Was that a determination on merits? No. Further, the fact as to whether the Claimants were on the land and for how long, and if their stay on the same was quiet, open and uninterrupted thereby giving them the legal benefit of claiming the land adversely were neither determined nor were they the reason for striking out the suit. Additionally, the issue as to whether if the Plaintiffs were on the land and for over twelve years the Defendant’s title was extinguished or the defendants lost their right to recover the land remain to be determined.
11. Further, at no point in time did the Court determine the legal ownership of the suit land as the law prescribes. In any event, even if that would have been determined on merits and they lost the case,



unless the Court, in the judgment expressly directed that the plaintiffs be evicted, the decision could not found an application for an eviction order. Therefore, this Court finds humbly that the application is misconceived and an abuse of the process of the Court.

12. The upshot of the foregoing is that the application lacks merit. I hereby order that it be dismissed. There with be no order as costs.
13. Orders accordingly.

RULING DATED SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 18TH DAY OF JUNE 2025

HON. DR. IUR FRED NYAGAKA,

JUDGE

In the presence of,

Muniko Advocate for the Plaintiffs/Respondents

Ombuhi Advocate for the Defendants/Applicants

