



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 100 OF 2018 (O.S)

MUYUMBA WATITA ENOS BARAZA JAMES TARA & 49 OTHERS.....PLAINTIFFS

VERSUS

JOANNES SATIA

(Administrator of the Estate of RICHARD SATIA (DECEASED)).....1ST DEFENDANT

BEATRICE INJETE FRANCIS

(Administrator of the Estate of NYONGESA AWELEKHE (DECEASED))...2ND DEFENDANT

NELSON WANYONYI

(Administrator of the Estate of JULIUS MABUSI (DECEASED)).....3RD DEFENDANT

JOAB NYONGESA

(Administrator of the Estate of NYONGESA CHAIRO (DECEASED)).....4TH DEFENDANT

LONAH NAKHUMICHA KITUI

(Administrator of the Estate of JACKTON SIBOKI (DECEASED)).....5TH DEFENDANT

RULING

1. The plaintiffs filed an originating summons dated 12/11/2018 where they sought a determination of several questions *inter alia* whether the interests of the defendants in the **40 acres** part of **LR No. 5335/24** situate in Endeless area has been extinguished by lapse of time and by the provisions of the **Limitation of Action Act Cap 21** and whether the plaintiffs have acquired title to the said **40 acres** by way of adverse possession. They sought a determination of the question as to whether the land register to the suit land should be rectified to reflect them as the owners of the suit land and a permanent injunction to restrain the defendants from interfering with the plaintiffs' use possession and occupation of the suit land. Alongside that notice of originating summons they also filed a notice of motion dated 12/11/2018 seeking order of temporary injunction restraining the defendants from interfering with the suit land pending the hearing and determination of the application interpartes and subsequently pending the hearing of the suit. When this matter was brought before me on the 19/11/2018 I certified the application urgent and ordered that it be served within two days for interpartes hearing on 27/11/2018.

2. On 27/11/2018 Mr. Omboto for all the defendants intimated that the application is res judicata. The court took note of the doctrine of res judicata raised on the originating summons and observed that it would not be satisfactory to order the hearing of the originating summons or even give directions as to how it should be heard until it has been established whether it is res judicata. This court then ordered that the preliminary objection, being insufficient the defendants should file an appropriate application based on the matters on the notice of preliminary objection dated 26/11/2018 within 14 days and serve. The matter was to be mentioned on 28/1/2019 by which date the respondents to the intended application if served should have filed a response. The court also ordered that the status quo over the suit land be maintained.

3. On 21/12/2018 the instant application dated 14/12/2018 was filed alongside it a notice of preliminary objection dated 26/11/2018 was filed on the same date.

4. On the 28/1/2019 the parties confirmed that they are relying on the affidavit evidence for the hearing on the application dated 14/11/2018 and the court ordered ruling to be on 28/2/2019. While doing this it escaped the court that the application had been filed after the required

period had expired and no leave was sought to do so.

5. I have examined the record and noted that although the court ordered that the intended application be filed within 14 day from 17/11/2018, the same was filed after the expiry of that period without any leave of court. Parties must always comply with court order and where they have transgressed against the express orders of the court they must apply for leave to do what they were supposed to do. In absence of such leave, any action undertaken after the period limited by the court has expired is presumptuous improper and irregular.

6. For the above reasons I find that the application dated **14/12/2018** is irregularly on the record and I therefore strike it out with costs to the plaintiffs/respondents. I also order that the issue of *res judicata* shall be tried on the basis of the evidence presented by either side in regard of the substantive originating motion dated **12/11/2018**.

Dated, signed and delivered at Kitale on this 28th day of March, 2019.

MWANGI NJOROGE

JUDGE

28/03/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the applicant

N/A for the respondent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

28/03/2019