



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT 214 OF 2014

In the Matter of: Limitation of Actions Act Cap 22 Laws of Kenya

In the Matter of: Plot Title No. CR 45198 (original) CR. 31784/11

Cr. 31784/1, Cr. 271/58/26, Cr. No. 2391/60,

(MN/III/2390/2) MN/III/5108 area 0.549 HA (approx.)

(MN/III/2390/3 MN/III/9109 Area 0.0460 HA (approx.)

(MN/III/2390/4 MN/III/9110 Area 0.0460 HA (approx.)

(MN/III/2390/5 MN/III/9111 Area 0.0460 HA (approx.)

(MN/III/2390/6 MN/III/9112 Area 0.0460 HA (approx.)

(MN/III/2390/7 MN/III/9113 Area 0.2622 HA (approx.)

(MN/III/2390/8 MN/III/9114 Area 0.0636 HA (approx.)

(MN/III/2390/9 MN/III/9116 Area 0.0708 HA (approx.)

CR 33707 (MN/III/2390/11 MN/III/9117 Area 0.0815 HA (approx.)

ABRAHAM B. MWANJE & 4 OTHERS.....PLAINTIFFS/RESPONDENTS

-VERSUS-

ELIUD TIMOTHY MWAMUNGA & 7 OTHERS.....DEFENDANTS

AND

YUSUF BAKARI NGAO & 4 OTHERS.....INTERESTED PARTY/APPLICANTS

(all suing on behalf of themselves and the other

members of Barani Community Self Help Group)

RULING

1. For determination is the chamber summons application dated 1st September 2017 in which the applicants sought to be joined as interested parties to this suit. The application is made on the basis that the applicants also stay on the suit land and are likely to suffer immense loss and damage if the orders prayed for are granted at their exclusion because they have undertaken development on the portions being occupied.

2. The application is opposed by the 4th defendant through a replying affidavit sworn by Rosebell Wangui. The 4th defendant deposed that:

i) The Applicants are guilty of material non-disclosure for failing to disclose that they had conceded to an application dated 19th September 2016 which sought to strike out their suit No. Malindi ELC 177 of 2015 (O. S).

ii) That none of the Applicants are on her land No 2390/III/MN land as she purchased the same when it was already fenced.

3. The 2nd plaintiff also swore an affidavit on his behalf and on behalf of his co – plaintiffs. He deposed that the applicants reside on a different parcel of land originally plot No 313/III/MN while the plaintiffs occupy plot originally No 312/III/MN subsequently subdivided. For this reason they opposed the joinder of the applicants to this suit.

4. The Applicants and the 4th defendant have filed written submissions which I have considered. From the onset, I note that Mr Kahindi Katana is the only name disclosed in the application. Mr Katana purports to bring the application on his behalf and on behalf of other members of Barani Community Self Help Group. There is no certificate of registration in respect of Barani Community Self Help Group that has been annexed. Neither is there a list of names stating who the membership of this group is attached to the affidavit in support of the application nor signed authority to bring the application on their behalf has been filed. On this account alone, I find the application as presented to be defective, null and void. You cannot bring a representative claim without disclosing the persons you represent or showing their authority given to you.

5. Secondly, the applicant has annexed pleadings filed in Malindi ELC Case No 177 of 2015, Mombasa ELC No 3 of 2014 (O. S). If the Applicants had moved the Court in the said suits then the proper order to seek is for consolidation if at all and not joinder. In any event a claim for adverse possession must be supported by facts. In the supporting affidavit, the interested parties have not disclosed that the plaintiffs' claim is inclusive of the portions occupied by the Applicants. There was no annexed copy of the certificate of postal search to support their claim that the parcels they are occupying are registered in the defendants sued herein. It is not enough as pleaded in paragraph 12 of the supporting affidavit to merely list the plot numbers without supporting documents.

6. In light of the two issues explained above, I find the chamber summons dated 1.9.2017 as defective, abuse of the Court process and lacking in merit. Accordingly it is dismissed with costs to the plaintiffs and the 4th defendant.

Dated, signed & delivered at Mombasa this 7th March 2019.

A. OMOLLO

JUDGE