



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 15 OF 2018

HUSSEIN JUMA ALL..... PLAINTIFF

VERSUS

JUMA ALI OMAR1ST DEFENDANT

ALI ABDALLAH JUMA..... 2ND DEFENDANT

RULING

(Documents filed in court but not clear what the applicant wants; documents and suit struck out under Order 2 Rule 15)

1. The applicant in this matter is acting in person.

2. It is not very clear from the record what exactly the applicant wishes to have and what sort of case is before this court. The first document filed on 25 January 2018 was a Certificate of Urgency accompanied by a Notice of Motion, which motion sought orders of temporary injunction to stop “the defendants from selling, constructing, and or in any other way alienating any portion of land at Bububu area within Mombasa County Government” pending the hearing and determination of this application inter partes and later pending the hearing and determination of the suit. No specific land parcel was mentioned in this application. The next set of documents were filed on 4 September 2018. This was another Notice of Motion, drawn in similar terms to the first application filed on 25 January 2018. Again, no land was mentioned. On the same day, 4 September 2018, there was filed an Originating Summons said to be taken out pursuant to the provisions of Order 37 Rules 7, and 8 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act. The applicant sought orders that he has acquired through adverse possession the land that he identified as Plot No. 19 Bububu. There was an accompanying affidavit which simply asked for an order of temporary injunction. A List of Documents was also filed attaching what is identified as a “Letter of Consent dated 16th December 2017”. There is actually nothing which would be considered a “Letter of Consent dated 16th December 2017” for there is nothing annexed bearing that date. What is annexed is an agreement dated 4 June 1961 between the colonial Government and one Ali Omari being a licence over the land described as Plot No. 19 Section III Mainland South for a term of 9 months from 1 January 1961. There are some other documents which appear to be land cards but I cannot make sense of them for they are photocopies which cannot be read, and some identity cards.

3. On 9 November 2018, there was filed a Certificate of Urgency with no application and no affidavit. There was however annexed a letter dated 2 November 2018, from Residents Land Protection Organization of Kenya – NGO addressed to the Honourable Chief Magistrate, Mombasa High Court, whose reference is “Urgent Request of Court Order to restrain the Defendant from Using Land Forcibly Land With Dispute”(sic).

4. On 9 April 2019, the court (A. Omolo J) granted the applicant interim orders of injunction and directed hearing inter partes. The matter came before me for hearing on 14 October 2019.

5. Mr. Mgupu, learned counsel for the 2nd respondent, made submissions that it is not clear what is before court, but I directed the matter to proceed as an application for injunction. The applicant stated that there are three plots in issue which he identified as Plot No. 103, 537 and 91. He stated that he resides in Plot No. 91 but has trees in Plots No. 537 and 103. He stated that the 2nd respondent resides in Plot No. 103. Mr. Mgupu pointed out that the 1st defendant is actually father of the applicant and proprietor of Plot No. 19. He stated that his client owns the plots No. 103 and 537, but was at a loss as to whether the applicant claims them by adverse possession or alleges that the 2nd respondent has trespassed into the Plot No. 19.

6. I have considered all that is before me and my conclusion is that whatever has been filed is not intelligible and it is not possible for the persons named as respondents to know what is facing them and what exactly the applicant wants. There are the applications for injunction but as I have pointed out, it is not specified what land parcel is to be affected by the order of injunction. Even if I am to assume that the suit is

an Originating Summons seeking adverse possession, what is said to be claimed by way of adverse possession is Plot No. 19 which is not owned by the 2nd respondent. I in fact do not know who owns Plot No. 19 for no title deed is annexed and no copy of the extract of the register as required by Order 37 Rule 7. One cannot tell what is the subject matter of this suit.

7. In as much as I am meant to pronounce myself on what is thought to be an application for injunction, my view of the matter is that there is no suit before me that is subject to determination. The people sued in this matter cannot even tell what is facing them and cannot respond to the documents filed in this case.

8. Under Order 2 Rule 15 the court can strike out any pleading on the grounds that

- (a) It discloses no reasonable cause of action or defence in law; or
- (b) It is scandalous, frivolous and vexatious; or
- (c) It may prejudice, embarrass or delay the fair trial of the action; or
- (d) It is otherwise an abuse of the process of court.

9. In my view, what has been filed as pleadings ticks all the above boxes. There is no need of the court labouring on a matter that one cannot make head or tail of and it is also not fair to the persons sued for they do not know why they have been sued and what they need to respond to.

10. Given the above, the order that I feel is most appropriate to make is to hold that there is no suit before me capable of going for trial, and that all documents filed herein be struck out. If ever it can be considered that there was any suit filed, it is hereby also struck out. I will award costs to the 2nd respondent. The interim orders are hereby vacated.

11. The applicant is advised to bring to court a suit that is intelligible and he will be heard. It will in fact help him if he can instruct counsel.

12. Orders accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 31st day of October 2019.

MUNYAO SILA

JUDGE.

IN THE PRESENCE OF:

The applicant in person.

Mr Koech holding brief for Mr Mgupu for the 2nd respondent.

Court assistant; Koitamet.