



Khimji & another v Nyambu & others (Environment and Land Miscellaneous Application E097 of 2024) [2025] KEELC 5372 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5372 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E097 OF 2024**

**YM ANGIMA, J
JULY 17, 2025**

BETWEEN

ALPESH KANAHSIHN KHIMJI 1ST APPLICANT

FIVE ELEVEN TRADERS AND AUCTIONEERS 2ND APPLICANT

AND

SAFARI CHENGO NYAMBU AND OTHERS RESPONDENT

RULING

A. Introduction

1. It would appear the vide an Originating Summons dated 20.01.2021 in Mombasa ELC NO. 9 of 2021 the respondents sued the 1st applicant seeking adverse possession of parcel Nos.MV/II/231, 271, 276, 277 and 278. The material on record shows that the said summons were struck out by Hon. Justice Munyao Sila on 21.04.2022 because the suit properties were no longer in existence at the material time. The court found that the suit properties had been amalgamated into one parcel known as subdivision No. 15870.
2. It would further appear that about 2 years after the striking out the 1st applicant filed an application dated 19.03.2024 seeking, inter alia, an order for the OCS Kiambeni Police Stations to assist in the eviction of the respondents following the issuance of a certain notice to vacate dated 18.02.2023. One of the grounds cited in the application was the dismissal of the respondents' claim for adverse possession on 21.04.2022. The record shows that vide a ruling dated 25.09.2024 the Hon. Justice Stephen Kibunja dismissal the said application with costs.

B. Applicants' instant application

3. By a notice of motion dated 20.12.2024 expressed to be filed pursuant to rule 9 of the Auctioneers Rules, Sections 2 and 3A of the Civil Procedure Rules and all enabling provisions of the law, the



applicants sought an order for the County Police Commander-Mombasa to provide security to the auctioneer to execute an 'eviction process' against the respondents.

4. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 1st applicant on 20.12.2024. The 1st applicant pleaded that the respondents' claim for adverse possession in the primary suit was struck out on 21.04.2022 hence they ought to be evicted from the suit properties which were described to be subdivisions of original No. 1587/191-204/MN/Section II.

C. Respondents' response

5. The respondents filed a replying affidavit sworn by Nzingo Katana Gona on 13.05.2024 in opposition to the application. It was pleaded that the issues raised in the application were the same as the ones raised in the earlier application which was dismissed by Hon. Justice Kibunja on 25.09.2025. It was further pleaded that the applicants had not complied with all requirements of the Land Act on issuance and service of an eviction notice.
6. The respondents contended that the application was made in bad faith and in abuse of the court process since the issues raised were determined by a court of competent jurisdiction last year. As a result, the court was urged to dismiss the application.

D. Directions on submissions

7. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their submissions. However, by the time of preparation of the ruling none of the parties had filed submissions.

E. Issues for determination

8. The court has considered the motion dated 20.12.2024, the replying affidavit in opposition thereto as well as the material on record. The court is of the view that the main question for determination is whether the applicants have made out a case for the grant of the orders sought.

F. Analysis and determination

9. There is no contest that the respondents' suit for adverse possession was struck out on 21.04.2022. There is no indication on record to show that the 1st applicant had counter-claimed for recovery of the suit properties. There is also no indication on record to show that an eviction order was granted in favour of the 1st applicant upon the respondents' suit being struck out. In the premises, the court is of the view that there being no order or decree for the respondents' eviction issued in the primary suit, then the applicants cannot validly seek an order for the County Police Commander Mombasa to provide security to an auctioneer to execute an 'eviction process' since there is no eviction order to be executed.
10. The court is further of the view that if the applicants wanted to undertake any eviction process pursuant to the dismissal order of 27.04.2022 then they ought to have moved the court in the primary suit for that purpose. The material on record shows that the 1st applicant actually moved the court vide a notice of motion dated 19.03.2024 which was dismissed on 25.09.2024.
11. The court is thus of the view that upon dismissal of the earlier application the 1st applicant was not at liberty to appear before a different judge of co-ordinate jurisdiction to seek the very same orders



which were denied by the court in the primary suit. Such conduct amounts to a clear abuse of the court process.

12. It would also appear from the material on record that the applicants have not established a close connection between the properties which were the subject of the primary suit and ones the subject of the instant application. It would appear from the ruling of Justice Munyao Sila dated 21.04.2022 that the suit properties were amalgamated or consolidated into subdivision No. 15870. However, the instant application indicates that the properties the subject of the application are all subdivision of original No. 15871/191-2004/MN. It was not explained how No.15870 evolved into No. 18871 and other numbers.
13. In the event, the court finds and holds that the applicants have not made out a case for the grant of the orders sought for execution of any decree or order issued by the court. There is simply no eviction order on record which would call for execution.

G. Conclusion and disposal order

14. The upshot of the foregoing is that the court finds no merit in the applicants' application. Consequently, the notice of motion dated 20.12.2024 is hereby dismissed with no orders as to costs.

It is so ordered.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 17TH DAY OF JULY, 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

No appearance for 1st applicant

Mr. Macharia for 2nd applicant

Mr. Mramba for the respondents

