

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 158 OF 2011 (O.S)

JACKSON MBITHI NZEKIPLAINTIFF

VERSUS

WILLY WAMBUA MWEKIDEFENDANT

RULING

1. In the Application dated 20th September, 2012, the Defendant is seeking for the following orders:

a. That this suit be struck out with costs as the subject matter herein, land parcel Mavoko Town Block 3/3205, is also the subject matter in Machakos HCCC No. 26 of 2011, between the two parties herein and filed prior to this suit. This suit is therefore an abuse of the court process.

b. Costs of this Application be borne by the Plaintiff/Respondent.

2. The Application is premised on the grounds that on 7th February, 2011, the Defendant filed Machakos HCCC No. 26 of 2011 in respect of parcel of land known as Mavoko Town Block 3/3205 together with an Application for injunction; that the said Application was heard inter-partes; that this suit raises similar issues as ELC No. 26 of 2011 and that the suit is an abuse of the court process.

3. In response, the Plaintiff deponed that the legal issues raised in the current Originating Summons are different from ELC No. 26 of 2011 and that the only way of handling the matters is by consolidating them.

4. The Plaintiff and the Defendant's advocates filed brief submissions which I have considered.

5. This suit was commenced by way for an Originating Summons pursuant to Order 37 Rule 7 of the Civil Procedure Rules. The Plaintiff herein is claiming for the suit land by prescriptive rights or adverse possession.

6. On the other hand, the Defendant herein filed Machakos HCCC No. 26 of 2011 claiming that he is the registered proprietor of the suit land and that the Plaintiff herein should be evicted from the suit land.

7. Indeed, the Defendant's Application for injunction is HCCC No. 26 of 2011 was heard inter-partes and the Plaintiff herein was restrained from interfering with the suit land.

8. I have seen a copy of the Defence and Counter-claim that was filed by the Plaintiff herein in HCCC No. 26 of 2011. In his Counter-claim, the Plaintiff herein pleaded that he is the one entitled to the suit land by virtue of having lived on the land for more than 26 years. Having pleaded that he is entitled to the suit land by virtue of the doctrine of adverse possession, it was improper and an abuse of the court process for the Plaintiff herein to file a separate suit claiming for the same land on the same ground.

9. For those reasons, I find that this suit should not have been filed in the first place.

10. In the circumstances, I strike out the suit with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 26TH DAY OF JANUARY, 2018.

O.A. ANGOTE

JUDGE