

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC 49 OF 2013

YAKOBO KILWAKE WANYAMA

ENOCK KWANUSU

GLADYS AUMA NDEGE

EVERLINE INDEKWA JOSEPHAT

NORAH WANYAMA.....PLAINTIFFS

VERSUS

CHARLES BARASA MANABA.....DEFENDANT

RULING

The defendant objects to the suit on the following points of law:-

1. The defendant's file ELC NO. 187 OF 2014 (i.e. Civil suit No. 219 of 2012) on 29/8/2012 against the 5th plaintiff under whom the 1st, 2nd, 3rd and 4th plaintiffs are claiming. While the suit was pending the plaintiffs have come up with the present suit. The suit is sub judice under Section 6 of the Civil Procedure Act which prohibits the court from conducting the suit. The court may stay the suit until the first suit is determined.
2. The originating summons by which the suit was brought is fatally defective in that it was not supported by affidavit and a certified copy of the title of the land was not annexed as required by Order 37 r7 (2) of the Civil Procedure Rules 2010. This is an incurable defect.

The respondents submitted that the suit is not defective and relied on the case of Richard Arap Chemunyani & Others Vs Mipasi Ole Ngogoni HCCC No. 160 of 2005 and the PO is a technical objection. As quoted in the ruling the cases of Kweyu Vs Moto (1990) KLR 709 and Kasuve Vs Maani Investments Ltd (2004) KLR 184 can be distinguished for in these cases the suit was heard and the plaintiff's failed to produce certified extracts of the titles. In the present case the suit has not been heard and directions have not been taken.

On the issue of sub judice, I have perused the pleadings of both cases and find that the cause of actions are different. One is about trespass and eviction and the other is adverse possession. The parties may as well apply to consolidate the matters. For these reasons I find the preliminary objection has no merit and I dismiss the same with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 31ST DAY OF MAY 2018.

N.A. MATHEKA

JUDGE