



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

MISC. CIVIL APPLICATION NO. 332 OF 2009

IN THE MATTR OF: THE PARCEL OF LAND KNOWN AS PLOT NO. IX/49 & IX/50

AND

IN THE MATTER OF: THE LIMITATION OF ACTIONS ACT CAP 22 OF THE LAWS OF KENYA

BETWEEN

MATHEW M. KISAO & 43 OTHERS.....PLAINTIFFS/APPLICANTS

-VERSUS-

CHANDAN JETHANAND GIDOOMAL.....1ST RESPONENT

PREM JETHANAND GIDOOMAL.....2ND RESPONDENT

MUNICIPAL COUNCIL OF MOMBASA.....3RD RESPONDENT

RULING

1. For determination is the notice of motion dated 11th April 2017 brought under the provisions of Order 26 rule 1 and Order 51 rule 1 in which the following orders are sought:

1. That, one KIGO NG'ANG'A and his Advocate Mr. E. Waithira do deposit Kshs. 500,000/- as security for costs herein before they can be heard in this matter.

2. That, one KIGO NG'ANG'A do pay costs of this Application.

2. The applicants aver that Mr Kigo Ng'anga is perennially bringing one application after another but does not pay any costs when those applications are dismissed with costs. The application is supported by the affidavit of Mathew Kisao sworn on the same date. He annexed as 'A' the application filed by the said Kigo Ng'ang'a. Mr Kisao also deposed that Mr Kigo Ng'ang'a is not a party to this suit. That his advocate Mr. E. N. Waithera was part of the consent reached in the Court of Appeal that parties would abandon interlocutory applications. He therefore urged that they be compelled to make a deposit of Kshs 500,000 as security for costs.

3. The application is opposed by Mr Kigo N'ang'a vide the grounds of opposition filed on 21st December 2017. He stated that he is not a party to the suit herein.

4. I have looked at the documents marked as 'A' in the plaintiffs/applicants affidavit and note that only the application dated 11th July 2014 was brought by Kigo Ng'ang'a. The application dated 29th June 2014 was commenced at the instance of Musa Kwinga. This Court has not been told who Musa Kwinga is but he is described as the 22nd applicant. No nexus has been pleaded to exist between him and Kigo Ng'ang'a. The other parts of the annexure are criminal proceedings against two named individuals. Kigo Ng'ang'a is not one of them. Lastly is the ruling by this Court dismissing Mr Kigo Ng'ang'a's application dated 11th July 2014.

5. It is one application that is shown to have been filed at the instance of Kigo Ng'ang'a, the consent order referred to have been reached in the Court of Appeal where Mr E. N Waithera Advocate is said to be party to, was not annexed. In any event if there is a breach of the said Order, the proper Court to punish for its breach is the Court which made it. Given that the Order was not annexed, I cannot comment on its

import in regard to the present application.

6. The plaintiffs have stated that Mr Kigo Ng'ang'a is not a party to this suit. Order 26 rule 1 provides thus:

“In any suit the Court may order that security for the whole or any part of the costs of any part of the costs of any defendant or third or subsequent party be given by another party.”

The order in my reading anticipates provision for costs in favour of the person sued and not the party suing. The plaintiffs cannot therefore seek to be provided with an order for security of costs against a party sued and or particularly against a person not party to the proceedings. They have the option of joining Mr Kigo Ng'ang'a if they feel they have a claim against him. However at this juncture, they can only execute for costs awarded to them in the normal manner. It is thus my finding that the orders sought in the present application are not available to the applicants. The application is hereby dismissed for want of merit with no order as to costs.

Dated, signed & delivered at Mombasa this 25th May 2018

A. OMOLLO

JUDGE