



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

PETITION NO. 1 OF 2016

CENTER FOR JUSTICE, GOVERNANCE AND

ENVIRONMENTAL ACTION (Suing on their

Behalf and on behalf of all the Residents

Of Owino Uhuru village in Mikindani

Changamwe area, Mombasa.....PETITIONERS

AND

THE HONOURABLE ATTORNEY GENERAL

CABINET SECRETARY MINISTRY OF ENVIRONMENT, WATER AND

NATURAL RESOURCES

CABINET SECRETARY MINISTRY OF HEALTH

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

THE COUNTY GOVERNMENT OF MOMBASA

THE EXPORT PROCESSING ZONES AUTHORITY

METAL REFINARY (EPZ) LTD

PENGUIN PAPER AND BOOK COMPANY.....RESPONDENTS

AND

GOERGE OSIRI ANGORO & 219 OTHERS.....PROPOSED RESPONDENTS

RULING

1. The applicants in this motion dated 15th March 2018 have moved the Court under the provisions of Section 1A, 1B & 3A of the Civil Procedure Act and Order 1 rule 10 (2) of Civil Procedure Rules seeking that this Court does grant them the following order:

i) Spent

ii) That the Honourable Court do issue orders allowing the Proposed Respondents listed in the Letter of Authority issued to GEORGE OSIRI ANGORO to join this petition as Proposed Respondents and be allowed to defend the suit.

iii) Cost of the application be provided for

2. The application is premised on the grounds listed on its face and which grounds have also been deposed to in the affidavit of George Osiri Angoro and are as follows:

a) That the persons listed in the Letter of Authority as Proposed Respondents are residents of the village known as OWINO URHURU within Mikindani Mombasa County within Plot 148/V/MN and that the petition No. 1 of 2016 also concerns the Proposed Respondents as the residents of the village known as OWINO UHURU.

b) That they have both Permanent and Semi permanent Houses within the suit land.

c) That they came to know about the existence of Petition No. 1 of 2016 in the Environment and Land Court in Mombasa and that any order the Honourable Court shall issue will affect them directly as the occupiers and owners of the suit land.

d) That the Petitioners are seeking the orders which when effected shall deprive the Proposed Respondents of their homes and they shall stand to suffer irreparable loss and deprivation of their legal and beneficial interests in the law.

e) That the Proposed Respondents acquired the suit property by way of adverse possession vide suit No. 51 of 2010 sometimes in the year 2012.

f) That when the petition was filed, I and other residents were not consulted and that any orders/directions which the Honourable Court makes shall affect us.

g) That it's necessary for the interested Proposed Respondents to be enjoined as Proposed Respondents to this suit.

3. When the petition came for hearing, the Court directed that the application be disposed off first. The Petitioners together with the existing Respondents were given leave to file their responses to the application and subsequently file their written submissions. Except for the Petitioners and the 6th Respondent, there is no document on record by the 1st – 5th & 7th – 8th Respondents opposing the motion. The Petitioners filed a replying affidavit as well as their written submissions on 10th April 2018. The 6th Respondent filed their submissions on 6th April 2010 while the Applicants have not filed any submissions.

4. The 6th Respondents are supporting the joining of the Applicants as Respondents to these proceedings so as to avert fresh suit being brought against them by the said Applicants. The Petitioners however oppose the motion which I summarize in two grounds i.e.;

i) The advocate has filed the documents without instructions since the annexed list of authority is a copy of a list which came into his possession when he represented the applicants in MSA High Court Civil suit No 51 of 2010 (O. S).

ii) The Petitioners do not have any cause of action against the applicants some of whom are their witnesses.

5. The Petitioners gave the specifics of why they aver that Mr Okanga lacks instruction to bring the motion particularly by annexing to their replying affidavit pleadings in Mombasa HCC No 51 of 2010 (O.S) as annexure "ANW 1 & 2". They also annexed another undated list as 'ANW 3' where majority of the Petitioners signed denying giving George Osiri and or Okanga & Co. advocates to make the application on their behalf. The Applicants nor their advocates did not file a further affidavit to rebut these facts. I especially expected them to deny the allegation that the list of authority annexed was the one used in a previous suit.

6. Suits belong to parties and not their advocates and in an instance where instruction to bring the pleadings on behalf of a party is lacking, it follows that such pleadings are void. Mr Okanga drew the application on behalf of 220 Proposed Respondents out of which the 219 are said to have nominated George Angoro to sign pleadings on their behalf. Out of these, about 80 persons signed a new list stating their authority to George Angoro was limited to MSA HCC 51 of 2010 (O.S). In view of this and in the absence of a fresh authority obtained by George to clarify the persons he is acting on their behalf, the application/pleadings before Court is brought against the will of the said persons to join them as Respondents and is therefore a nullity. On this account only, the application becomes a candidate for dismissal.

7. Assuming the said advocates had authority, do the Applicants merit the granting of the orders sought? The Applicants in ground 4 stated that if the prayers in the Petition is granted, they are likely to be deprived of their homes. I have looked at the reliefs sought in the Petition which are aptly summarized in the Petitioners' submissions to include a declaration for rights over a clean and health environment; Right of life; Compensations for the damages caused to the Petitioners' health, environment & lost life and orders of mandamus directed at the specified Respondents to comply with the specified regulations/conventions. The Petition as framed does not place any claim to land ownership or seek eviction orders. The Applicants fears are thus unfounded. Further the Applicants did not annex a draft response to the Petition to state why they are opposed to the grant of the prayers in the petition if at all.

8. It is my considered finding therefore that the Applicants do not constitute parties to this suit whose absence would negate the just and proper determination over this matter. The 6th Respondent's fear of a similar suit being filed against them is neither here as the Applicants if they were to be joined as Respondents, they would be on the same side as the 6th Respondent. In the result, I find the present application as lacking in merit and proceed to dismiss it. I make an order that each party will bear their respective costs of the application.

Dated, signed & delivered at Mombasa this 16th May 2018

A. OMOLLO

JUDGE