



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 41 OF 2016 (OS)

1. WASHE MWALIMU MAJENGO

2. MSHELE MWALIMU MAJENGO

3. MWATATA KAFUMO WASHE.....PLAINTIFFS

=VERSUS=

MWALIMU MWANGOTO NGUYETE DEFENDANT

R U L I N G

1. The Application dated 10th May, 2016 has been filed by the Defendant seeking to strike out the Originating Summons dated 19th January, 2015 and filed on 3rd March, 2016.
2. The Application is premised on the grounds that the suit property is on unadjudicated and unregistered Land; that no Certificate of Title exists to enable the orders of adverse possession to issue and that as such neither the Plaintiffs nor the Defendant can comply with the Mandatory provisions of Order 37 Rule 7(2) of the Civil Procedure Rules.
3. It is the Defendant's case that on 11th November, 2015, the Kilifi County Land adjudication officer declared the location within which the subject land is located an adjudication sector and as such, no suit can be filed and or entertained without the leave of the Adjudication Officer.
4. The Plaintiffs' did not file a response to the Defendant's Application.
5. The Defendant's counsel filed written submissions together with authorities which I have considered.
6. The Plaintiff filed the Originating Summons seeking the court to determine if he is entitled to a piece of land situated at Bendia/Barda-Salama Sub-location, Kilifi, measuring approximately 30 acres by adverse possession.
7. The other issue that the Plaintiff has sought to be determined by the court is whether the possession and occupation by him of the suit land constitutes an overriding interest in terms of the provision of the Land Act, 2012 and whether the suit property is his ancestral land.
8. In the Affidavit in support of the Originating Summons, the Plaintiff deponed that he is one of the sons of Washe Mwalimu Majengo, who belongs to Chilukwa Family; that the Chilukwa family has since time

immemorial been living on the suit land and that the Zegota family is claiming the whole land and want to evict them.

9. The Plaintiff's claim is based on two aspects: customary law and adverse possession.

10. Indeed, as correctly submitted by the Defendant's counsel, the Plaintiffs can only lay a claim over the suit property either under customary land tenure or under adverse possession and not both.

11. Even if the Plaintiff's claims are in the alternative, this courts' jurisdiction to entertain a claim under adverse possession can only arise where the claim relates to land that has been registered.

12. Order 37 Rule 7(2) of the Civil Procedure Rules provides that a party seeking to be declared as the owner of land under the doctrine of adverse possession must annex an extract of Title to his Application. The Plaintiff has not attached either the extract of title or the Title itself to show that the suit property has been registered in favour of the Defendant.

13. The uncontested facts in this matter are that the suit property has not been adjudicated and is unregistered.

14. Indeed, the Defendant has annexed a letter authored by the Land Adjudication Settlement Officer dated 11th November, 2015 showing that Mwembeketi/Kasidi Adjudication section, Kilifi, was declared an adjudication section on the said date pursuant to the provision of Section of 5 the Land Adjudication Act.

15. In the said letter, the Land Adjudication and Settlement Officer quoted the provision of section 30 of the Land Adjudication Act and stated as follows:

“ In accordance with section 30 of the Act, with effect from the date of this notice, except with the prior consent in writing of the Adjudication Officer, no person shall entertain any Civil Proceedings whatsoever in which any rights or interest in and within this Adjudication Section is called in question, until the Adjudication register for this sector has become final in all aspects under section 29 of the Act”.

16. The above quotation is what the law provides. Having filed this suit after the area under which the suit property falls had been declared an adjudication sector, the suit becomes a non stater.

17. Indeed, in view of the fact that the purpose of declaring an area an adjudication section is to ascertain and record the rights of people residing in the area under customary law, the Plaintiffs claim can only be lodged before the different bodies that have been established under the Land Adjudication Act and not in this court, and more so without without the consent of the Adjudication Officer.

18. For those reasons, I allow the Defendant's Application dated 10th May, 2016.

19. This suit is therefore struck out with costs.

Dated, signed and delivered in Malindi this 3rd day of February, 2017.

O. A. Angote

Judge