



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT NO 216 OF 2008 (OS)

IN THE MATTER OF: PARCEL NUMBER 324/SECTION I/MN

AND

IN THE MATTER OF:

AN APPLICATION FOR DECLARATION THAT THE APPLICANTS HAVE OBTAINED OWNERSHIP OF NINE OF NINE DECIMAL SEVEN SIX (9-76) ACRES OF THE ABOVE AND BY WAY OF ADVERSE POSSESSION

BETWEEN

- 1. MZEE OMAR ALI**
- 2. REHEMA MOHAMMED BWANA**
- 3. MWANAHAMISI HILALI KHAMIS**
- 4. GRACE M. KILANGO**
- 5. MWANAISHA SUBET**
- 6. MARIAM ADBALLA SEBU.....PLAINTIFFS/APPLICANTS**

AND

- 1. MILFAN DEVELOPERS LIMITED**
- 2. POMPELL LIMITED.....RESPONDENT/DEFENDANT**

RULING

1. This is the Notice of Motion dated 8th April 2016. It is brought under Order 1 Rule 10, Orders 50, Rule 1 of the Civil Procedure Rules Section 3A, 1A 63 C of the Civil Procedure Act and all enabling provisions of the law.

It seeks orders that;

1. Spent.

2. THIS Honourable Court be pleased to enjoin seventy squatters referred to as **UTANGE MSUFINI SQUATTERS** and enjoin them as interested parties on plaintiffs/applicants in this matter and direct them to file any relevant documents in supporting their claim if any.

3. Costs of this application be provided for.

2. The grounds relied upon are that Utange Msufini comprises of one thousand squatters want to be enjoined in this originating summons as plaintiffs/applicants as they are also occupants of plot number **324/1/MN** in Utange.

They have occupies and live in the suit premises for over 20 years and during their quiet stat they have been able to establish permanent residences.

3. The application is supported by an affidavit sworn by David Thuo on the 8th April 2016.

4. The application is supposed. There are grounds of opposition filed by the 1st defendant dated 17th august 2016. The 2nd defendants have also filed grounds of opposition dated 6th March 2017.

5. I have considered the Notice of Motion together with the supporting affidavit. I have also considered the grounds of opposition filed by the 1st and 2nd defendants/respondents. I have considered the submissions of counsel and the relevant provisions of the law.

The applicants call themselves **UTANGE MSUFINI SQUATTERS**. They claim they been on the suit land for over twenty (20) years

6. The issue for determination is whether they have satisfied the court that they ought to be enjoined in the suit. The 1st defendant/respondent's contention is that the application is fatally defective and does not satisfy the requirements of Order 1 Rule 10 of the Civil Procedure Rules Order 1 Rule 10 of the Civil Procedure Rules reads;

Sub rule 1

“Where a suit has been instituted in the name of the wrong persons as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff the court may at any stage of the suit if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.” I find that the court must be satisfied that there has been a mistake then may allow substitution. In the present scenario, no such mistake has been made.

7. The application is supported by an affidavit of one David Thuo. There is also an authority to act on behalf dated 8th April 2016 and filed in court on 8th April 2016. The same is signed by the said David Thuo. There are no signatures by the sixty nine (69) other plaintiffs/applicants? I also ask who are these intended plaintiffs/applicants. Order 1 Rule 1 3 (1) reads *“where there are more plaintiffs than one anyone or more may be authorized by any other of them to appear, plead or act for such other in any proceeding and in like manner where ether are more defendants than one or any one or more of them maybe authorized by any other of them to appear plead or act for such other many proceeding ”*.

Sub rule 2 states;

“The authority shall be in writing signed by the party giving it and shall be filed in the case”. This is stated in mandatory terms.

The said David Thuo has sworn an affidavit without authority of the other intended plaintiffs.. I find that the application herein is fatally defective and it must fail. The said application is an abuse of the court process and the same is dismissed with costs to the defendants.

Dated and signed on the 28th day of June 2017 at Mombasa.

L. KOMINGOI

JUDGE

28/6/17

Ruling dated and delivered in open court on the 28th day of June 2017 in the presence of Mr. Mwabonje for Mr. Kengafor the plaintiffs and the court assistant Koitamet.

L. KOMINGOI

JUDGE

28/6/17