



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CIVIL SUIT NO. 232 OF 2014

KATANA SAID KALAMA & OTHERS.....PLAINTIFFS

-VERSUS-

TWO THIRDS INVESTMENTS LIMITED.....DEFENDANT

RULING

1. The notice of motion dated 5th October 2016 is brought under the provisions of order 1 rule 10, Order 50 rule 1 and section 3A & 63 (e) of the Civil Procedure Rules & Act. The applicants are seeking the reliefs that:

(i) Spent

(ii) That this Honourable Court be pleased to enjoin KAZUNGU KATOLE MRAMBA, ALEX MWANGOMBE BARAZA, JAVANSON MWAFONDO KASHINDO, KHADIJA CHIDODO KHAASSIM, SHARON MUGUTU PIUS, KAHINDI TABU KARISA Community comprising of several squatters as interested parties and or plaintiffs/applicants in this matter and direct them to file any relevant documents in support of their claim if any.

(iii) Costs of the application be provided for.

2. The application is premised on the grounds that they have occupied plot No 390/11/MN in Utange Kibokoni for over 20 years. Secondly that they will be rendered homeless if they are not joined in the current proceedings and that no prejudice shall be suffered by the plaintiffs if the orders are granted.

3. The application is opposed by the plaintiffs vide grounds of opposition filed on 24th April 2017. The plaintiffs/Respondents stated that one can only be joined in a suit if a right of relief arising out of the same transaction is alleged to exist. That the application does not add value to the case as the applicants have failed to show any proprietary interest they have in this case.

4. The application is also opposed to by the defendant vide a supplementary replying affidavit of J. K Wanyoike, the defendant deposed that the suit property was surveyed pursuant to a Court order given in Mombasa ELC No 3 of 2015. That the purpose of the survey was to determine the occupants and the size of the area occupied. He annexed a copy of the survey report as **JKW – 11**. That the report does not mention any of the proposed plaintiffs. For that reason, he opposed the application.

5. Order 1 of the Civil Procedure Rules sets out who may be joined as plaintiffs under rule 1 to be:

“All persons in whom any right to relief in respect of or arising out of the same transaction or series of acts or transactions is alleged to exist.”

The claim before Court is for adverse possession. In law, a claimant is obligated to show the Court that he is in possession of the land for a period of over 12 years. For the applicants to be joined in this suit, they are obligated to show that their claim is related to that of the existing plaintiffs their and or that interest arises from the same acts/transactions.

6. The applicants have submitted that rule 10 allows the Court to enjoin any person whether as plaintiff or defendant whose presence before the Court may be necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. The applicants relied on the findings in the case of **Meme vs Republic (2004) I KLR 637** where it was held that the Court shall consider joinder;

(i) Where the presence of the party will result in complete settlement of all the questions involved in the proceedings.

(ii) Where joinder provides for protection of rights which would otherwise be adversely affected.

(iii) Where the joinder will prevent a likely cause of proliferated litigation.

7. The applicants added that all a party needs is to demonstrate sufficient interest in the suit and the interest need not be the kind that must succeed. The applicants however fell short of telling this Court is what value their addition would make the questions involved in this matter. In my opinion using the applicants’ own analogy, their addition to this suit will not result in the complete settlement of questions involved because different set of facts have to be proved for each of the claimants on when they took occupation of the land and the existing plaintiffs already feel they have nothing common in their cause of action.

8. Secondly, in reference to the holding that the protection of rights of a party that would otherwise be adversely affected, the applicants although alleging to be occupying the same title of land, their portions most likely is distinct from the portions being claimed by the existing plaintiffs. In the originating summons before the Court and the survey report annexed, specific title numbers emanating from the original number has been stated to be occupied by the plaintiffs. The orders to be granted by this Court would be specific to the said portions **“occupied”** by the said plaintiffs and no nexus has been shown that such an order will be adversely the interest of these applicants. Lastly on the question whether the joinder will prevent a likely cause of proliferated litigation; my answer is that the joinder will instead complicate the hearing and determination of this dispute. Whichever way this case is to be decided, the orders given would not protect the interests of the applicants as the plaintiffs’ suit is not in a representative capacity on behalf of all the occupants of the suit land. The applicants’ interest are better sorted out if at all in a separate suit.

9. In conclusion, I find that the interests of the applicants are separate and distinct from those of the existing plaintiffs. Although the subject matter mentioned was initially the same, certain steps have taken place in these proceedings that subsequently varied the same (survey report showing the new numbers after sub-division). Consequently joining the applicants in this suit will not serve the intended purpose of the provisions of order 1 rule 10. In the result that their application is disallowed with costs in the cause.

Dated, signed & delivered at Mombasa this 2nd of November 2017.

A. OMOLLO

JUDGE