



REPUBLIC OF KENYA



**Mbaabu v Mutunga & 4 others (Environmental and Land Originating Summons  
E012 of 2023) [2024] KEELC 1531 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1531 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2023  
CK NZILI, J  
MARCH 20, 2024**

**BETWEEN**

**MUTUMA JOHN MBAABU ..... PLAINTIFF**

**AND**

**M'LITHIRA KIRERA ..... 1<sup>ST</sup> DEFENDANT**

**JAMES KANYIKA MUTUNGA ..... 2<sup>ND</sup> DEFENDANT**

**JOSEPH M'THIRIKA ..... 3<sup>RD</sup> DEFENDANT**

**DOMISIANO MITHIKA ..... 4<sup>TH</sup> DEFENDANT**

**DAVID THIRINJA ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before me is a preliminary objection dated 28.11.2023. The defendants take the view that the suit is premature, defective and a non-starter since there is no certified copy of the title attached to the originating summons and that the suit land falls under adjudication. Therefore, the defendant avers rights to the land are yet to be ascertained or registered. Further, the defendants fault the verifying affidavit for defectiveness and lastly, that no consent was sought, obtained and filed with the suit since the land is under adjudication.
2. The primary pleadings in this suit are the originating summons under Order 37 of the *Civil Procedure Rules* as read together with Section 38 of the *Limitations of Actions Act*, where the plaintiff seeks orders of adverse possession against parcel No. 6755 Karama Adjudication Section. The court is asked to order the rectification of the register, replacement of the defendants' names with that of the plaintiff and for the defendants to execute instruments of transfer thereof to effect the registration.
3. The originating summons is supported by an affidavit of Mutuma John Mbaabu sworn on 16.11.2023 who says that he has lived on the suit land for over 30 years. In paragraph 5 he deposes that he has



- never heard of any registration or transfer of the suit land to the defendants. No annexures have been attached to the supporting affidavit to link the defendants with the suit land or confirm the status of the registration of the parcel in their favour.
4. In a written statement of defence dated 28.11.2023, the defendants raised a preliminary objection that the suit is defective, bad in law and an abuse of the court process. They aver that they have no interest in the alleged parcel of land since their parcels of land are No's.2057, 324, 8543, 7682 and 8074 Karama Adjudication Section.
  5. Further, the defendants avers there have been similar suits, namely Meru J.R. No. 17 of 2017, and Tigania PMCC ELC 14 of 2023; hence, the plaintiff is a litigious person engaging them in endless court battles. The statement of defence was accompanied by a list of witnesses, witness statements and documents, among them confirmation letters of ownership of Parcel No's. 7682, 2057, 324, 8543, 8074 and proceedings in H.C Meru JR17 of 2017, which was dismissed for want of prosecution on 9.7.2018.
  6. Order 37 of the Civil Procedure Rules provides that a party seeking to be declared entitled to a relief of adverse possession must attach to the supporting affidavit a copy of a title or extract of the registered land in issue. In this suit, no such title or extract has been attached. There is nothing to show that the suit land is registered land under the Land Act or Land Registration Act.
  7. Section 38 of the Limitation of Actions Act refers to that a claim is to land registered under any of the acts cited in Section 37 of the Act or land comprised in a lease registered under any of those acts. In Samuel Kipng'eno Koech vs Agnes Wambui Gitonga (2016) eKLR, the court said adverse possession is directed at a specific land which is registered and tilted and if the land is not, it will be a case falling under the Land Adjudication Act or the Land Consolidation Act. The court said such land has to await the ascertainment of rights through the process of adjudication, and one cannot claim adverse possession over it, for there will be no one to sue since there will be no one holding any title.
  8. Similarly, in adverse possession, time begins to run on the date the land is registered in the name of the valid owner. In Koech Kangogo v Chebii Yego [2018] eKLR, the court held that time does not run during consolidation, demarcation and adjudication stages but only does so from the date of registration. In this case, the defendants have admitted that the suit parcels of land are undergoing an adjudication process. The confirmation letter dated 2017, in the list of documents is evidence that the land is governed by Cap 284.
  9. The plaintiff has not filed a reply to the defence to show that the land after 2017, has become titled or is now awaiting issuance of title after the adjudication section has been published and after the Chief Land Registrar has caused the registration of the suit property pursuant to Section 28 of the Land Adjudication Act, for time to start running. See Solomon Meme Muthamia v Ntari Kabutura & Land Adjudication Officer Meru [2001] eKLR.
  10. A preliminary objection refers to a pure point of law which, if argued, may dispose of a suit. It may be based on jurisdiction or statute of limitation. In this case, the plaintiff has not attached a certificate of title, a copy of an official search or a copy of records to show the known owner of the suitland. See Wambugu vs Njuguna (1983) KLR 172.
  11. The land is reportedly under adjudication process, and there is no evidence that it is registered in accordance with Sections 37 and 38 of the Limitation of Actions Act (Cap 22). See Adonija Onyango Oluoch & others vs Jackson Leela Musekenya (2018) eKLR.
  12. In my view, therefore, the preliminary objection is appropriately taken. The same is hereby upheld. The originating summons dated 16.11.2023 is struck with costs.



**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON  
THIS 20th DAY OF MARCH, 2024**

In presence of

C.A Kananu

Kava for Omari for the plaintiff present

**HON. C K NZILI**

**JUDGE**

