



REPUBLIC OF KENYA



Odiero & 3 others (Being officials and t/a Jesus Victory Ministry International) v Schmis & 2 others (Environment & Land Case E017 of 2023) [2024] KEELC 3720 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3720 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E017 OF 2023**

**NA MATHEKA, J
APRIL 24, 2024**

BETWEEN

**MAURICE MDAHO ODIERO 1ST PLAINTIFF
GILBERT KHAEMBA NAMGENDO 2ND PLAINTIFF
PHOEBE MBAISI IMBUKA 3RD PLAINTIFF
EDWIN KACHERO MUKAA 4TH PLAINTIFF
BEING OFFICIALS AND T/A JESUS VICTORY MINISTRY INTERNATIONAL**

AND

**JUDITH SHOKOWA MZUNDU SCHMIS 1ST DEFENDANT
HELMUT SCHMID 2ND DEFENDANT
NASORO SAIDI SULEIMAN 3RD DEFENDANT**

RULING

1. The application is dated 24th January 2024 and is brought under Section 1A, 1B 34 and 63 (e) of the [Civil Procedure Act](#) and Order 36, Rules 1 and 2 and Order 2 Rule 15 (1) (b) and (d) Order 51 of the [Civil Procedure Rules](#) seeking the following orders;
 1. That this Honourable Court be pleased to strike out the Further Origination Summons dated 29th May 2023.
 2. That this Honourable Court be pleased to issue an Order of eviction to the Plaintiffs in plot No 7778/11/MN and plot No 7779/11/MN.
 3. That cost of the application be provided for,



2. It will be grounded on the annexed affidavit of Nasoro Saidi Suleiman and on grounds that the Applicants/Defendants are the owners of plots No 7778/11/MN and plot No 7779/11/MN. That the Respondents/Plaintiffs have filed a Further Originating Summons seeking for adverse possession before mandatory 12 years are over. That the originating summons is prematurely filed. That the Respondents/Plaintiffs are tenants and cannot apply for adverse possession. That the Respondents/Plaintiffs be ejected from the suit property for none payment of rent.
3. This court has considered the application and submissions therein. The application was not opposed. Order 2 rule 15 of the *Civil Procedure Rules* which provides as follows:-

"At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

 - a) it discloses no reasonable cause of action or defence in law; or
 - b) it is scandalous, frivolous or vexatious; or
 - c) it may prejudice, embarrass or delay the fair trial of the action; or
 - d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be. "
4. Order 2 Rule 15(2) of the *Civil Procedure Rules* provides that no evidence is admissible on an application under sub rule (1) (a) and therefore, it should be evident from the pleadings sought to be struck out that no reasonable cause of action has been disclosed without reference to further evidence. The court's power to strike out pleadings therefore, is to be exercised sparingly and cautiously. In the case of *D.T. Dobie & Company (Kenya) Ltd. v Muchina* (1982) KLR 1 the court stated that;

"No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it."
5. The main principle to be considered in an application for striking out a pleading therefore is, whether triable issues have been raised. This application is based on the grounds that that the Applicants/Defendants are the owners of plots No 7778/11/MN and plot No 7779/11/MN. That the Respondents/Plaintiffs have filed a Further Originating Summons seeking for adverse possession before mandatory 12 years are over. That the originating summons is prematurely filed. That the Respondents/Plaintiffs are tenants and cannot apply for adverse possession. That the Respondents/Plaintiffs be ejected from the suit property for none payment of rent. The 3rd Defendant in his supporting affidavit sworn on the 24th January 2024 states that the Applicant is a church and is in rent arrears. That he was issued with a vesting order on 8th March 2018 and hence they cannot dispossess him until 2031 hence the claim is premature. I have perused the said originating summons and the Plaintiffs claim to have been in continuous, exclusive and uninterrupted possession of the suit parcel of land for a period of twelve years. The plaintiffs have raised a prime facie case which should go to trial for adjudication. I find there are triable issues in this case and can only be determined once the matter goes to full trail. Judicial precedent has established that the jurisdiction to strike out any pleadings or suit is one to be exercised with utmost caution and sparingly. I find that the application is not merited and I dismiss it. Costs to be in the cause.
6. It is so ordered.



DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF APRIL 2024.

N.A. MATHEKA

JUDGE

