



**Ngugi v Meron Limited & another (Environment & Land Case
E156 of 2023) [2024] KEELC 3315 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3315 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E156 OF 2023**

**JA MOGENI, J
APRIL 23, 2024**

BETWEEN

GEOFFREY NGANGA NGUGI PLAINTIFF

AND

MERON LIMITED 1ST DEFENDANT

LANGTON INVESTMENT LIMITED 2ND DEFENDANT

RULING

1. The Applicant herein took out the motion dated 23/01/2024 under Order 2, Rule 15 (1) (b) and (d) of the [Civil Procedure Rules](#), seeking the following orders:
 1. This suit be struck out.
 2. The costs of the application and the suit be awarded to the 2nd defendant
2. The aforesaid motion is supported by the grounds set out on the face thereof and the affidavit of David Mucai Kunyiha sworn on 29/01/2024. The applicant enumerated the following grounds:
 - a. The suit is fatally defective and is for striking out as the certificates of title of the properties known as Nairobi/Block 219/48 Nairobi/Block 219/49, Nairobi/Block 219/50, Nairobi/Block 219/51, Nairobi/Block 219/52, Nairobi/Block 219/53 ('the suit properties') were revoked by the Registrar of Titles on 1st December 2023 by gazette notice number 16350 of 2023.
 - b. The plaintiffs suit is frivolous and vexatious as the suit properties do not exist and the orders sought are incapable of being granted.
 - c. The suit properties originated from a fraudulent attempt to subdivide LR No. 28401 ('original property') which is the subject matter of the proceedings in the Environment and Land



Court (ELC) in Nairobi ELC Case No. E139 of 2023- Langton Investments Limited versus Meron Limited, the Chief Land Registrar and the Director Land Administration wherein the defendants are parties.

- d. The plaintiffs suit is incurably defective for failure to annex an abstract of title as mandatorily required by Order 37 Rule 7 (2) of the Civil Procedure Rules 2010.
 - e. The applicant is apprehensive that the plaintiff will use this court as a vehicle to steal a march on it and interfere with the peaceful possession of the suit property.
3. The defendants opposed the motion by filing the replying affidavit of Geoffry Nganga Ngugi sworn on 7/02/2024.
 4. He alleges that as on 8/11/2023 the registration particulars of the suit property were as captured in the Originating Summons filed. That the 2nd defendant/applicant orchestrated a change of registration particulars of the parcel numbers for the parcels of land in litigation during pendency of this suit to defeat the plaintiff's claim.
 5. That the defendant averred that the applicant has claimed that on 1/12/2023 the Certificates of property known as Nairobi/Block 219/48, 219/49, 219/50, 219/51, 219/52 and 219/53 were revoked by Registrar. That the respondent was not privy to the proceedings leading to this revocation of these certificates of title.
 6. It is his contention that he has been on the suit premises since February 2007 and that he ought to be heard and he has annexed and abstract of the title (Green Card) marked as GNN2.
 7. He further averred that a party cannot deliberately alter registration particulars of a suit premises during the pendency of a suit to seek profit and lodge an application to strike out a suit. Further that if numbers of suit property changes this can be remedied through an amendment.
 8. He contended that the revocation of the titles held cannot be a basis for defeating the claim as it relates to occupation of land in respect of which titles were revoked. He averred that the application seeking to strike out the suit is gross and an abuse of the court process.
 9. That a party cannot deliberately alter registration particulars of the suit premises during pendency of a suit to seek profit and lodge an application to strike out. Further that if numbers of the suit premises
 10. I have considered the grounds set out on the face of the motion and the facts deponed in the affidavits filed in support and against the application plus the respective submissions by the parties. The substantive prayers sought in the motion are that of striking out the suit on the ground that the suit property as alleged in the plaint does not exist.

Analysis

11. The court has been called upon to strike out the suit herein for reason that the suit property that the suit is premised on does not exist. As a matter of law, any application for adverse possession must be accompanied with a copy of the title of the suit property.
12. This Application is brought under the provisions as detailed above of Order 2 rule 15 (1) (b) and (d) of the *Civil Procedure Rules*, 2010 which reads as follows:

“ 15.

- (1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that –



- (b) it is scandalous, frivolous or vexatious; or
- (d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgement to be entered accordingly, as the case may be.”

13. The applicant has gone to great lengths to show that there is already in existence a suit litigating on the same suit property involving the same parties claiming the same suit property except for the plaintiff in the instant suit who has brought the instant suit through Originating Summons claiming adverse possession.
14. The applicant has disclosed that there is a pending suit ELC Case No. E 139 of 2023 which was filed earlier than the instant suit involving the applicant and the 1st defendant. The plaintiff in the instant suit claims not to be party to the said suit yet he is the claimant for adverse possession to the suit property that is allegedly owned by the 1st defendant who is also the 1st defendant in ELC Case No. E139 of 2023.
15. Coincidentally the 1st defendant did not file a response to the instant application and neither did they file a defence to the Originating Summons. I also noted that the 1st defendant had filed another suit ELC E153 of 2023 claiming ownership of the suit property which was however withdrawn as a result of the parties concurring to the withdrawal I however note that the abstracts of the alleged green card attached show that the 1st defendant allegedly came into possession of the suit property on 15/09/2023 yet the plaintiff claims to have come into quiet, uninterrupted possession since 2007. This means therefore that even if the plaintiff were to desire to have acquired the suit property by adverse possession this is not possible since it is hardly a year since the 1st defendant allegedly acquired the said property.
16. I have noted that there has been no finality in the determination of the two suits filed and now the instant suit bring the number to 3. On my part, I have had cause to examine the Exhibits to the Affidavit in support of the Application. I have noted that the copies of the titles emanating from the sub-divisions apparently originated from the National Government as Lessor in 1993.
17. In 1993 the term National Government was not used on title documents. The titles bore the name the Government of the Republic of Kenya. It is also not clear why the extracts of the Green Cards marked as GNN bore the name of the 1st defendant in the encumbrances section and the name of the National Government in the Registered Proprietor with title having been issued on 15/09/2023.
18. Order 37 Rule 7, requires an Applicant to attach an extract of a certified copy of title. The essence of the title is to point out with certainty the ownership and title of land. In the instant suit the extracts of the green card attached do not attest to the ownership that span the period claimed by the plaintiff in the Originating Summons which is 2007. The extracts show ownership that spans from 2023 and the land belongs to the National Government. The 1st defendant is reflected in the green card as being an encumbrance. With this kind of record, it is not clear if indeed the 1st defendant is the owner of the suit property.
19. I am however aware that adverse possession does not accrue to title but to land but this land must be identified with the owner. The Green card extracts point to an ownership of land to the National Government because that is what is in the proprietor's section.
20. From the perusal of the attachments produced I also noted that the Chief Land Registrar vide a letter dated 8/11/2023 put a restriction on the suit title and also recalled and cancelled all titles which were



a result of the sub-division of LR No. 28401 Grant IR 152720 vide a summon dated 9/11/2023 and this was gazetted vide Gazette Notice number 16350 of 01/12/2023. Gazette Notice number 16351 OF 1/12/2023 recognized the title of the applicant as being the genuine title and cancelled all the sub-divisions made by the 1st defendant.

21. This in essence point to the fact that indeed the suit property claimed by the plaintiff in the Originating Summons does not exist and the basis upon which the Summons was filed is fallacious. Further the green card extracts point to the fact the suit properties allegedly belong to the National Government as a proprietor and not the plaintiff.
22. Adverse possession cannot accrue where the land is owned by the government. It seems from the pleadings that the what the plaintiff had thought to be land belonging to the 1st defendant does not exist.

Determination

23. The court has been called upon to strike out the suit herein for reason that the suit property as prayed for by the plaintiff does not exist yet the said parcels form the basis of the Plaintiff's claim. The said title to the said parcels were cancelled by the Chief Land Registrar through Gazette Notice 16350 dated 01/12/2023. The plaintiff acknowledges this fact. Further the ownership of the suit property is a subject of another case ELC 139 of 2023 which was filed earlier than the Originating Summons.
24. The plaintiff filed the Originating Summons well aware that the issue of ownership was a subject in ELC 139 of 2023 where he claims not to be a party but the 1st defendant on whose suit property he claims adverse possession is a party. The 1st defendant conveniently chose not to participate in the instant suit and or application. illegal and was obtained through fraud by one Jacob Indech Wakhu.
25. As a matter of law, any claim for adverse possession in situations where the owner of the suit property cannot be identified or the said claim does not attach an extract of title that identifies the actual owner is bound to fail. Also, any attempt to claim ownership of public land or claim non-existent land will be declared a nullity by the court. Therefore, a cause of action which is founded on non-existent title will be struck out forthwith without hesitation. But does this case fit the bill for striking out?
26. From the outset, I must state that the power of court to strike out the originating Summons is in its very nature draconian comparable only to the drawing of "the sword of Damocles" as it decimates the entire cause of action by the Plaintiff. The act of striking out a pleading has been described in most apt phraseology such as "it drives away the Plaintiff from the seat of judgment summarily or without being heard." Therefore, courts of law have sounded caution that the power should be used sparingly and cautiously: In cases which are plain and obvious; which the judge can say at once that the claim is a pure demurrer and cannot be revived even by any amount of amendment. There are ample judicial decisions and literally works on this subject which I do not wish to multiply, except I can cite some few, for instance, the famous D.T.Dobie case, *Dysun vs AG* [1981] K.B. 410 at 419, *Hubduck & Sons Ltd vs Wilkinson, Hogwood & Clerk* [1899] 1. K.B 86 at 91, aid Hamad Shamisi case, Bulten Leake and Jacobs; Precedents of pleadings 12th edition, Chutty on contracts. That is the test I will apply here.
27. Is this case such a clear case which I should say at once is a demurrer and should be struck out? In answering this question, I do not wish to fall into error; I am properly minded that in applications such as this I should just say enough for purposes of determining the application and avoid expressing opinion that may prejudice any future trial of the matter. I note that the 1st defendant who supposedly is the owner of the suit property is a party in this matter but has maintained a legally studious silence in the hope that this court might just make the error he is waiting for.



- 28. I will however disappoint him since I have seen through the maze that the plaintiff and the 1st defendant have chosen to take the courts through. The matter filed before this case ELC 139 of 2023 needs to unravel the mystery about the land ownership before we can hear any claims of would be owners whether adversely or otherwise. The determination of that case will settle the claim here once and for all.
- 29. Accordingly, I am convinced that the issues raised in this application bring themselves within the narrow and summary procedure provided under Order 15 of the Civil Procedure Rules for striking out of pleadings. I am persuaded that there is no leg upon which the instant suit can stand upon and proceed to strike it out and award costs to the 2nd defendant. It is so ordered.

File is closed.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF APRIL 2024.

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**MOGENI J
JUDGE**

In the virtual presence of:-

- Mr. Kabue for the Plaintiff
- Mr. Ruto holding brief for Mr. Kirago Kamau for the 2nd Defendant
- Ms. Caroline Sagina: Court Assistant

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**MOGENI J
JUDGE**

