



**Fulson Company Limited v Rama & 3 others (Environment & Land  
Case 130 of 2018) [2024] KEELC 4125 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4125 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 130 OF 2018**

**FM NJOROGE, J**

**MAY 13, 2024**

**BETWEEN**

**FULSON COMPANY LIMITED ..... PLAINTIFF**

**AND**

**RICHARD PREMCHAND RAMA ..... 1<sup>ST</sup> DEFENDANT**

**LYDIA WAIRIMU NJOROGE ..... 2<sup>ND</sup> DEFENDANT**

**EDWARD MZEE KAREZI ..... 3<sup>RD</sup> DEFENDANT**

**SENIOR REGISTRAR OF TITLES MOMBASA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Defendant's Notice of Motion dated 13<sup>th</sup> October 2023 brought under Order 2 Rule 15 1 (a), (b), (c) and (d) and Rule 3 and Order 51 Rule 1 of the Civil Procedure 2010, Section 1A, 1B and 3A of the Civil Procedure seeks the following orders:
  - a. Spent;
  - b. The honourable court be pleased to dismiss and strike out the Plaintiff's entire suit with costs for being henceforth, (*sic*) misplaced, fatally defective, null and void ab initio thereby a gross abuse of the court process, the (*sic*) precious judicial time, the orders and powers of the honourable court.
  - c. The plaint as drawn, filed and served upon the defendants no longer disclose (*sic*) or raise (*sic*) any reasonable and/or sustainable cause of action; it therefore can not sustain any triable issues to warrant a full trial as required under Order 2 Rule 15 1 (a)- (d) of the Civil Procedure Rules 2010 and should therefore be struck out and the entire suit dismissed with costs;



- d. The defendant/applicant be at liberty to apply for such other and/or further orders and/or directions as this honourable court may deem fit and just to grant;
- e. Costs of this application.
2. The application is founded on the grounds set out on its face and the depositions of Richard Premchand Rama of even date. It was stated that the plaintiff's suit has been overtaken by events that render it is misplaced, fatally defective, null and void ab initio thereby a gross abuse of the court process. It was also stated that the plaintiff's suit as drawn, filed and served upon the defendants no longer discloses or raises any reasonable and/or sustainable cause of action as the subject of the suit herein no longer exists as a consequence of the judgment in Mombasa ELC Constitutional Petition No. 32 of 2020.
3. The 3<sup>rd</sup> Defendant filed a replying affidavit sworn by Alfred Wanga, counsel on record for the 3<sup>rd</sup> defendant who whose averments are in support of the instant application. The plaintiff in response filed a replying affidavit sworn by Sangeeta Jiwan, the Plaintiff's Director who averred that the Plaintiff is the lawful registered owner of the suit property having purchased the same from the 3<sup>rd</sup> defendant pursuant to the sale agreement dated 14<sup>th</sup> October 2010; that upon purchase the plaintiff took possession of the suit property and developed the same; that the 1<sup>st</sup> and 2<sup>nd</sup> defendants forcefully trespassed thereon in May 2018 alleging a sale to the 2<sup>nd</sup> defendant by the 3<sup>rd</sup> defendant; that 1<sup>st</sup> and 2<sup>nd</sup> defendant filed a defence claiming to have purchased the suit land from the 3<sup>rd</sup> respondent; that the plaintiff's case has been heard and closed; that in 2019 one Mohamed filed MSA ELC Petition 32 of 2020 among others against the plaintiff herein seeking nullification of the mother title and the petition was allowed on 16/2/22; that later, the judgment nullifying the title was reviewed on appeal directing that the petitioner was to be paid Kshs 175,000,000/= in lieu of the cancellation of the title; that later, the ELC directed that the said decree was to be paid by the 1<sup>st</sup> 6<sup>th</sup> and 7<sup>th</sup> respondents jointly and severally; that thus the appellate decision left the registration status of the suit property and the subdivisions intact and the petitioner in MSA PET 32 of 2020 could only pursue compensation against the parties named; that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were not parties to the petition and can not seek to benefit from or enforce that judgment as sought in the instant application; that the plaintiff's rights to the land remain enforceable against third parties and so this court can pronounce itself on the rights, prayers, remedies and reliefs sought by the plaintiff against the defendant.
4. On 17<sup>th</sup> October 2023, the court directed that the application be disposed of by way of written submissions. At the time of writing this opinion the parties had not complied with the directions of the court. Not even the applicant had filed their submissions which demonstrates that they were not keen on prosecuting their application. An extension of time for parties to comply issued on 4/3/2024 never elicited any positive will in the parties to file submissions. The Application dated 13/10/2023 is therefore dismissed for noncompliance with the court's orders.



Dated, signed and delivered at Malindi via electronic mail on this 13<sup>th</sup> day of May 2024.

**MWANGI NJOROGE**



**JUDGE, ELC, MALINDI.**

**MLD ELC 130/18-RLG/DF-16.10.23/ /FH-17.10.23/LH-04.03.24/DR 13.05.24F Page 1 of 1**

