



Akoth & 6 others v Joslyn; Broadleaf Developers Ltd (Interested Party) (Environment & Land Case 004 of 2023) [2024] KEELC 5506 (KLR) (26 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5506 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 004 OF 2023**

**A OMBWAYO, J
JULY 26, 2024**

BETWEEN

**JOHN AKOTH 1ST PLAINTIFF
ANN WANGARE 2ND PLAINTIFF
JAMES M . MBURU 3RD PLAINTIFF
BEATRICE M MBURU 4TH PLAINTIFF
MARGARET WANJIRU 5TH PLAINTIFF
EUNICE CHEROTICH 6TH PLAINTIFF
JAMES NJOGU 7TH PLAINTIFF**

AND

SARAH JOSLYN DEFENDANT

AND

BROADLEAF DEVELOPERS LTD INTERESTED PARTY

RULING

1. The application before me is dated 8/12/2023. It seeks orders that this court re-opens the plaintiffs’ case to enable them be heard on merit and be allowed to adduce oral evidence and produce documents. The application is based on grounds that the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Plaintiffs had upon instructing the firm of Omusundi and C.O Advocates and visited their chambers in Eldoret and recorded their statements well in advance in preparation for their case that duly expressed their intentions and desire to testify.



2. The applicants contend that when the matter came up for 1st hearing on the 24th October 2023, all the Plaintiffs showed up in open court ready to be heard and even had a mini-pretrial briefing with the counsel holding brief, minutes before the hearing took off. Their preparation to testify was even confirmed by the sentiment of the counsel holding brief who gave an indication to court of the availability of four witnesses ready to testify
3. Unfortunately and shockingly, the 1st, 2nd, 4th, 5th, 6th and 7th Plaintiffs learnt that they had allegedly signed an authority appointing the 3rd Plaintiff to testify on their behalf, hence their statements were not on record, eventually denying them an opportunity to testify.
4. They vehemently refute to having consented or appending their signatures on the said authority, thus the need to have everyone testify as their issues herein are emotive and may render them homeless if all the facts are not laid bare succinctly for a just consideration by this honourable court.
5. According to the applicants, their failure to file and serve statements and documents on time, though properly instructed to, squarely falls on their previous advocates therefore amounting to inadequate counsel on the part of the said advocates
6. They have at all material times remained vigilant in pursuing this matter and have not slept on their rights at any point.
7. They contend that the court can only administer substantive justice by allowing the 1st, 2nd, 4th, 5th, 6th and 7th Plaintiffs to produce further evidence vide oral testimony and clear documents to enable the court appreciate the Plaintiff's case.
8. They argue that allowing the application herein will not be prejudicial to the respondents nor will production of full evidence prejudice the respondents as they are yet to be heard and they will be equally have an opportunity to cross examine the applicants together with their witnesses.
9. They believe that the law empowers this honorable court to exercise its unfettered discretion in allowing a party to reopen their case for purposes of aiding the court to satisfactorily and judiciously determine the real issues in controversies between parties.
10. Lastly, they depose that the application herein has been brought in good faith, without undue delay and in the interest of justice and humbly urge this honourable court to find the application merited and grant the applicants their day in court. The application is supported by the affidavit of James Njogu which reiterates the grounds of the application. The application is opposed by the 2nd respondent who states that the applicants seek to fill gaps in the evidence adduced by the 3rd Plaintiff. That allowing the application will be unfair to be defendants. The respondent states that the applicants were ably represented and were allowed to file further documents. The Plaintiff filed the documents that were produced as evidence. The 2nd Defendant states that the Plaintiff signed a letter of authority allowing the 3rd Plaintiff to sign pleading on their behalf.
11. I have considered to application, the replying affidavit and submission on record and I do find that this being a case of adverse procession, it is necessary to allow each Plaintiff to agitate his case to prove adverse possession since a claim of adverse possession is based on an individual's right to property as opposed to group rights. Moreover, an action based on adverse possession is actionable in personam. Indeed each of the Plaintiffs has the cardinal right to be heard and the same cannot be taken away by an authority signed by them authorizing the 3rd Plaintiff to testify on behalf of all the Plaintiffs. The respondents will suffer no prejudice if the application is allowed as they will be allowed to respond. I do allow the application and grant orders that the case be re-opened and that each of the Plaintiffs be heard. Costs in the cause.



RULING DATED, SIGNED AND DELIVERED ELECTRONICALLY ON 26th JULY 2024

A.O.OMBWAYO

JUDGE

