



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Ryoba & 4 others v Mwita & another (Environment & Land Case
27 of 2019) [2025] KEELC 737 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 737 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE 27 OF 2019**

M SILA, J

FEBRUARY 19, 2025

BETWEEN

FRANCIS CHACHA RYOBA 1ST APPLICANT
JOHN SINDA NGORO 2ND APPLICANT
JULIUS BATIROBA NGORO 3RD APPLICANT
JAMES NYANGI NGORO 4TH APPLICANT
GATI GORE CHACHA 5TH APPLICANT

AND

MUSA MAISORI MWITA 1ST RESPONDENT
FLORENCE KAGONYA MIJARA 2ND RESPONDENT

RULING

1. The applicants commenced suit through an Originating Summons dated 3 April 2019. It is a case seeking orders to title to land through adverse possession. In their case they averred that they were in possession of 9 acres out of the land parcel Bukira/Buhiringera/162 measuring 16.5 Ha. They averred that this land parcel No. 162 was subsequently subdivided into the land parcels Bukira/Buhiringera/604 and 605. In the supporting affidavit (paragraph 18 to be precise) it was deposed that they are entitled to orders that they be registered “as proprietors of 9 acres, 3.5 acres, 6 acres, 4 acres and 5.6 acres of Bukira/Buhirengera/162.”
2. When the matter came before me for directions on 17 October 2019, I pointed out to Mr. Muniko the vagueness in the pleadings as it was not clear what land was being claimed. I also advised him that the Green Cards (extracts of the registers) are not annexed. This was so as to comply with the provisions of Order 37 Rule 7 (2) which requires that such Originating Summons be supported by an affidavit to which a certified extract of the title to the land in question is annexed. Mr. Muniko stated that he



does not have his file. I placed the file aside for 45 minutes but when we came back, Mr. Muniko stated that he still does not have his file. I directed the applicant to pay Mr. Mogire, learned counsel for the respondents, Kshs. 1,500/= for his attendance and also pay Court Adjournment fees. I directed the matter to be mentioned on 7 November 2024.

3. On 7 November 2024, I specifically advised that the Originating Summons does not specify where the 9 acres, 3.5 acres, 6 acres, 4 acres and 5.6 acres are located. This was for reason that the parcel No. 162 was no longer in existence given that it was subdivided into the parcels No. 604 and 605. Mr. Mogire applied that the O.S be struck out while Mr. Muniko sought for time to amend submitting that striking out the pleadings would be drastic. I gave leave to amend the O.S within 14 days and also ordered throw away costs to Mr. Mogire of Kshs. 7,000/=. I directed the matter be mentioned on 18 February 2025.
4. On 18 February 2025, Mr. Muniko was not present in court. Neither had the Originating Summons been amended. Mr. Mogire further submitted that the applicants have not paid the throwaway costs ordered. He prayed that the Originating Summons be dismissed.
5. I have considered whether or not to strike out the Originating Summons. I reiterated the issues that I fleshed out when the matter came before me for directions. There is no extract of the register annexed. But even if I am to ignore that, the Originating Summons as drawn seeks acreages of land from the land parcel No. 162 which does not exist. It will be futile to proceed with the Originating Summons as drawn. The applicants were given an opportunity to amend the Originating Summons but they have failed to do so. Even as a sign of good faith, they have not paid the costs ordered to be paid to the respondent. In light of the foregoing, it is my finding that there will be no purpose served in proceeding with the hearing of the Originating Summons as drawn. This court cannot give land out of a title that is not in existence. This Originating Summons is liable to be struck out pursuant to Order 2 Rules 15 (a), (b), (c) and (d) i.e for failing to disclose a cause of action; is scandalous, frivolous and/or vexatious; it will prejudice, embarrass or delay the fair trial of the action; and it is otherwise an abuse of the process of court.
6. Pursuant to the above, this Originating Summons dated 3 April 2019 is hereby struck out with costs to the respondent.
7. Orders accordingly.

DATED AND DELIVERED THIS 19 DAY OF FEBRUARY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MIGORI

Delivered in the presence of :

Mr. Muniko for the applicants

Mr. Mogire for the respondents

Court Assistant : Josephine Lori

