



**Oketch v Lands Registrar (Environment & Land Miscellaneous Case E032 of 2023) [2024] KEELC 5623 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5623 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND MISCELLANEOUS CASE E032 OF 2023**

**NA MATHEKA, J**

**JULY 24, 2024**

**BETWEEN**

**JOSEPH MWAI OKETCH ..... APPLICANT**

**AND**

**LANDS REGISTRAR ..... RESPONDENT**

**RULING**

1. The application is dated 20<sup>th</sup> July 2023 and is brought under article 40(1)(2)(3a) and 162(2)(b) of Constitution of Kenya 2010, sections 3(1) (b), 7(d) and 150 of the Land Act, 2012, sections 3(b). 28 and 101 of the Land Registration Act, 2012, sections 4, 13 of the Environment and Land Court Act, sections IA, 1B and 3.4 of the Civil Procedure Act Cap 21 Laws of Kenya and Order 51 Rule I of the Civil Procedure Rules, 2010 seeking the following orders;
  1. That this Honourable Court be pleased to direct Lands Registrar at Mombasa Land Office to register the name of Joseph Mwai Oketch as the proprietor of all that piece of land known as Plot Subdivision No. MN/111/2731 registered as cru 26544 (Original No. MN/III/557/5) situate at North Coast of Mombasa Municipality by deleting the names of Resham Singh Birdee and Harkeval Singh Birdee and register the name of the Applicant in place thereof absolutely.
  2. That costs of this application be provided for.
2. It is grounded on the affidavit of Joseph Imwai Oketch and on the following grounds that the applicant was on 15<sup>th</sup> February 2018 adjudged by this Honourable Court to have acquired prescriptive rights by way of adverse possession over all that piece of land known as Plot Subdivision No. MN/III/2731 registered as CR. 26544 (Original No. MN/III/557/5) situate at North Coast of Mombasa Municipality. That the Decree issued on 21<sup>st</sup> February 2018 has been registered against the title and endorsed thereof. That the Land Registrar is yet to register the name of the applicant as the proprietor



of all that piece of land known as Plot Subdivision No. MN/111/2731 registered as CR. 26544 (Original No. MN/III/557/5) situate at North Coast of Mombasa Municipality. That there is no other remedy available to the Applicant to enforce the Decree issued on the 21/2/2015. That the application is made in the best interest of justice.

3. The Respondent opposed the application stating that it is misconceived, frivolous, vexatious and an abuse of the court process. The applicants have not complied with section 30 of the Land registration (general) regulations, 2017. That if the orders are granted, it will be in breach of Article 47 of the constitution on fair administrative action and Article 50(1). That it is in the interest of Justice that this application be dismissed with costs to the Respondents.
4. This court has considered the application. The Applicant states on 15<sup>th</sup> February 2018 adjudged by the Court ruled that he had acquired prescriptive rights by way of adverse possession over Plot Subdivision No. MN/III/2731 registered as CR. 26544 (Original No. MN/III/557/5) situate at North Coast of Mombasa Municipality. That the Decree issued on 21<sup>st</sup> February 2018 has been registered against the title and endorsed thereof. That the Land Registrar is yet to register the name of the applicant as the proprietor of the said piece of land. The respondent states that the applicant has not complied with section 30 of the Land registration (general) regulations, 2017.
5. I find that the applicant seeks substantive orders in this application. Courts have time and again taken the position that substantive orders cannot be issued in Miscellaneous Applications. This is the position that was adopted in Witmore Investment Limited v County Government of Kirinyaga & 3 Others (2016) eKLR where the court held that;

"So where a party such as an applicant herein seeks an order that in effect appears to resolve with finality an issue in controversy or a contested issue, the application ceases to be interlocutory and it is a misconception to describe it as such. If the applicant wanted to move this court for a final resolution of the issues in controversy raised in the application, it should have moved this court properly in the manner provided by law."

6. Similarly in Nairobi West Hospital Limited v Joseph Kariba & Another (2018)eKLR it was held that;

".....In my view this substantive order which for all intents and purposes cannot be issued through a miscellaneous application. A perusal of Order 3 Rule 1 of the Civil Procedure Rules will reveal that suit may be commenced by way of a plaint, a petition and or originating summons which is not the case here. The miscellaneous application may not offer the parties the opportunity to be heard. The order for discharge of a patient who is suffering from a rare condition stated to be ametrophyic lateral sclorsis and still admitted in the Intensive Care Unit of the applicant's hospital is strenuously opposed....Consequently, the preliminary objection is upheld and this suit is ordered struck out."

7. I find that there is already and existing matter in this case (ELC No. 281 of 2017) and this seems to be an issue of execution. One wonders why the applicant chose to file an independent application to seek substantive orders. For the foregoing reasons, I find this application lacks merit and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24<sup>TH</sup> DAY OF JULY 2024.**

**N.A. MATHEKA**

**JUDGE**

