



Case Number:	Environment and Land Case 162 of 2018
Date Delivered:	24 Mar 2022
Case Class:	Civil
Court:	Environment and Land Court at Mombasa
Case Action:	Ruling
Judge:	Nelly Awori Matheka
Citation:	Fatma Sufi Nur & 3 others v Tahir Sheikh Said Investments Limited; Shami Motors Limited (Interested party) [2022] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Mombasa
Docket Number:	-
History Docket Number:	-
Case Outcome:	Suit allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND AT MOMBASA

ELC CASE NO. 162 OF 2018

1. FATMA SUFI NUR

2. TAHLIL AYAN AHMED

3. SADI SAFI NUR

4. MOHAMED MAHMOOD.....PLAINTIFFS

VERSUS

TAHIR SHEIKH SAID INVESTMENTS LIMITED.....DEFENDANT

AND

SHAMI MOTORS LIMITED.....INTERESTED PARTY

RULING

The application is dated 31st January 2022 and is brought under sections 1A, IB, 3, 3A & 6 of the Civil Procedure Act Cap 21 seeking the following orders;

1. This application be certified urgent and service be dispensed with in the first instance.
2. There be a stay of proceedings pending the hearing and determination of this application.
3. This suit be stayed pending the hearing and determination of Mombasa HCC No. 57 of 2016; TSS Investment Limited & 3 others v Bank of Africa & 4 others.
4. The costs of this application be in the cause.

It is based on the grounds that this suit seeks to declare the Plaintiffs as the registered owners of Plot No. 154 Section XXI Mombasa Island, by virtue of the doctrine of adverse possession. The Suit Property is said to be charged to Bank of Africa Limited which has purported to exercise its statutory power of sale in favor of the Interested Party herein. Mombasa HCC No. 57 of 2016 is a suit by the Defendant herein challenging Bank of Africa's right to sell and the Interested Party's right to acquire the Suit Property. In a Notice of Motion dated 11th August 2021 filed in Mombasa HCC No. 57 of 2016, the Defendant here sought to restrain the Interested Party here from interfering with possession of the Suit Property. The Interested Party opposed the application vide a Replying Affidavit sworn by Amir Shahzad on 24th August 2021. The High Court (Mativo J.), in a ruling delivered on 25th January 2022, refused the injunction but ordered that Mombasa HCC No. 57 of 2016 be fixed for hearing within 120 days. If the High Court in Mombasa HCC No. 57 of 2016 ultimately finds that the sale of the Suit Property was lawful, and the court here finds that the adverse possession claim is merited, there will be two irreconcilable decisions by courts of coordinate jurisdiction. Further, if the High Court finds that the sale was lawful and title has lawfully passed to the Interested Party, it will be unnecessary for this court to decide the merits of the Plaintiffs' claim. The Plaintiffs would have to institute a fresh claim, if they are minded to, against the Interested Party. Additionally, the Defendant is significantly prejudiced in defending this matter when there is a finding, though interlocutory, in Mombasa HCC No. 57 of 2016, that it has lost title over the Suit Property, yet this suit presumes that the Defendant has title over the Suit Property. In fact, in a related suit filed by the Interested Party herein, that is Mombasa ELC No. 14 of 2021, Yano J. was alive to the possibility of conflicting decisions hence stayed that suit. To avert the possibilities above, it is in the

interests of justice and fairness that this suit be stayed pending the hearing of Mombasa HCC No. 57 of 2016. The Interested Party will not be prejudiced by a stay of proceedings. In fact, it will be saved from defending a suit which may require no defending. Assuming the suit is to be later defended, there will be no loss, save for the additional time taken to conclude it.

This court has considered the application and the submissions therein. Brief facts are that this suit seeks to declare the Plaintiffs as the registered owners of Plot No. 154 Section XXI Mombasa Island, by virtue of the doctrine of adverse possession. The Suit Property is said to be charged to Bank of Africa Limited which has purported to exercise its statutory power of sale in favor of the Interested Party herein in Mombasa HCC No. 57 of 2016. This is a suit by the Defendant herein challenging Bank of Africa's right to sell and the Interested Party's right to acquire the Suit Property. In a Notice of Motion dated 11th August 2021 filed in Mombasa HCC No. 57 of 2016, the Defendant here sought to restrain the Interested Party here from interfering with possession of the Suit Property. The Interested Party opposed the application vide a Replying Affidavit sworn by Amir Shahzad on 24th August 2021. The High Court (Mativo J.), in a ruling delivered on 25th January 2022, refused the injunction but ordered that Mombasa HCC No. 57 of 2016 be fixed for hearing within 120 days. This application by the defendant seeks to stay this matter pending the hearing and determination of Mombasa HCC No. 57 of 2016; TSS Investment Limited & 3 others v Bank of Africa & 4 others. The respondent objects to the application stating that the court granted interim injunctive orders to the applicant to preserve the suit property which orders are adverse to them in ELC NO. 14 of 2021 the Interested Party herein being the purchaser of the suit land sought for injunctive orders against the Plaintiff and the Applicant herein to the suit land and the Court ordered the stay of the hearing of ELC NO. 14 of 2021 and ordered that this matter proceeds. I find that all these cases relate to the ownership of the suit land concerning similar parties. I find that this matter cannot run parallel to Mombasa HCC No. 57 of 2016 as this can result in conflicting decisions. I find that the latter matter was filed earlier than the instant case and it would be prudent to allow the same to proceed to its conclusion. I find that the application is merited and I grant the following orders;

1. This suit be stayed pending the hearing and determination of Mombasa HCC No. 57 of 2016; TSS Investment Limited & 3 others v Bank of Africa & 4 others.
2. The costs of this application be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF MARCH 2022.

N.A. MATHEKA

JUDGE



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