



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELCNO.1112 OF 2013

MARY NDUTA KIHU.....1ST PLAINTIFF

KATHIRA NOOR H BILE.....2ND PLAINTIFF

JOSEPH MWANGI.....3RD PLAINTIFF

ROBERT OKWOYO MIRONGA.....4TH PLAINTIFF

=VERSUS=

MUUNGANO WA WANAVIJIJI

AKIBA MASHINANI TRUST.....DEFENDANT

JOHN MBATIA WAWERU.....PROPOSED INTERESTED

SISAL GREENFIELDS HOUSING CO-OPERATIVE

SOCIETY LTD.....PROPOSED DEFENDANT

RULING

1. This is a Ruling respect of a Chamber Summons dated 26th October 2020 in which the Applicant, Sisal Greenfields Co-operative Society Limited seeks to be enjoined in this suit as a defendant. The Applicant was registered under the Co-operative Societies Act on the 14th August 2019. The members of the Applicants were initially members of Sisal Settlement Savings Self-Help Group which was later registered as Mukuru Makao Bora Trust on 7th November 2012.

2. As at the time this suit was filed on 18th September 2013, the officials of the Applicant were instrumental in the filing of this suit. It is apparent that there were leadership wrangles which led to a split which resulted in the formation of the Applicant. The Applicant has a membership of 1590 members who contributed to the purchase of the suit properties. The Applicant contends that as its members are no longer represented by Mukuru Makao Bora Trust who is the Plaintiff, it is necessary that it be enjoined so that the court can effectually and completely adjudicate on the dispute to avoid a multiplicity of suits if the Applicant is not enjoined as a defendant.

3. The Applicant contends that its members are the ones who contributed a larger amount towards the purchase of the suit properties. It therefore contends that its members have a stake in the proceedings and therefore should be enjoined as a defendant.

4. The Respondents who are trustees of Mukuru Makao Bora Trust have opposed the Applicant's application arguing that the same is res judicata; is an abuse of the process of the court and that there is no way the officials of the Applicant who are already interested parties in this suit can again seek to be enjoined as defendants. The Respondents contend that they have no claim against the Applicant which will necessitate this court to allow its joinder as a defendant. The Respondents argue that this application has been brought too late in the day and that it is solely meant to delay the finalization of this case where the Plaintiff and the Defendant have closed their respective cases.

5. The Respondents contend that the current application is a collusion between the Defendant and the Applicant to scuttle the expeditious conclusion of this case.

6. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered

the submissions by the parties herein. The only issue for determination is whether the Applicant should be enjoined in this suit as a defendant. Some of the officials of the Applicant are interested parties in this suit. The same officials were the ones who were instrumental in the affairs of Mukuru Makao Bora Trust. Some of these officials have attempted to be enjoined as defendants in this suit before but their attempt did not succeed as the court dismissed the application as being an abuse of the process of the court. In the application which was dismissed, the officials of the Applicant had indicated in that application that they were members of Mukuru Makao Bora Trust and had contributed towards the purchase of the suit properties.

7. It is the same official who have now come back under the umbrella of the Applicant to seek the same orders which were rejected vide ruling of 14th November 2014. The Applicant concedes that some of its officials were behind the dismissed application but that they have now come under an entity which is capable of suing or being sued. The Respondents therefore argue that this application is res judicata.

8. This application is clearly res-judicata. The Respondents cannot escape the doctrine of res judicata by simply forming a society and claim that this is a new entity which was only incorporated in 2019 and therefore the doctrine of res judicata should not apply. This reasoning has no basis. The fact remains that all the members of the Applicant had made contribution under the umbrella of Mukuru Makao Bora Trust. Even if the Applicant comprises a splinter group from Mukuru Makao Bora Trust, the subject matter of the suit herein is not on leadership or who is to have what and who is to have the other.

9. The dispute herein is transfer of some two properties from the Defendant to the Plaintiffs as trustees of Mukuru Makao Bora Trust. The Respondents have no relief which they are seeking from the Applicant which will necessitate its inclusion in this suit as a defendant. The Applicant's members have been in the picture since the inception of the self-help organization which later transformed into Mukuru Makao Bora Trust. They cannot seek to be enjoined in this suit at this stage. This application was filed to achieve ulterior motives. The application is not only res-judicata but is also an abuse of the process of the court. I proceed to dismiss the application with costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 11TH DAY OF FEBRUARY 2021.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Magee for Plaintiff/Respondent

Mr Wanjohi for Interested Party/Applicant

Court Assistant: Hilda

E.O.OBAGA

JUDGE