



REPUBLIC OF KENYA



KENYA LAW
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Kipkulei & another v Chief Land Registrar & 8 others; Agricultural Development Corporation & another (Interested Parties) (Environment & Land Case E12 of 2022) [2023] KEELC 21564 (KLR) (15 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21564 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E12 OF 2022
FM NJOROGE, J
NOVEMBER 15, 2023**

BETWEEN

BENJAMIN KIPKECH KIPKULEI 1ST PLAINTIFF

DAVID KAHURIA MBUGUA 2ND PLAINTIFF

AND

CHIEF LAND REGISTRAR 1ST DEFENDANT

WILSON KIGUTU MACHARIA 2ND DEFENDANT

KIBII BOIYO 3RD DEFENDANT

LUKE KIPKEMOI CHEMWENI 4TH DEFENDANT

DAVID KIMANI GICHARU 5TH DEFENDANT

FRANCIS K. CHANGWONY 6TH DEFENDANT

DAVID BIWOTT 7TH DEFENDANT

DAVID BOIYO 8TH DEFENDANT

DAVID MAINA 9TH DEFENDANT

AND

AGRICULTURAL DEVELOPMENT CORPORATION INTERESTED PARTY

JOSEPH KIANGOI OMBASA INTERESTED PARTY



RULING

1. This is a ruling with respect of the plaintiffs Notice of Motion application dated 11/5/2023. It has been brought under order 2 rule 15(1) (a) (b) and (d) of the Civil Procedure Rules, section 1B and 3A and section 6 of the Civil Procedure Act and it seeks the following orders;
 - a. That the amended plaint dated 30th June 2022 filed herein against the 5th defendant herein be struck out and the suit be dismissed;
 - b. That the plaintiffs' claim be struck out for failing to relate to some properties whose numbers are given;
 - c. That the 5th defendant's costs of the suit and of the application be borne by the 1st defendant.
2. The application is supported by the grounds on its face and in the affidavit sworn by David Kimani Gicharu on 11/05/2023. The grounds are namely that the plaintiffs in the present case seek to enforce their alleged interest over parcels LR Nos. 20591/17, 20591/19, 20591/20, 20591/21, 20591/22, 20591/67, and 20591/80. The applicant states that he has no proprietary interest in the said properties and that sold parcel no 119 to a third party. He further avers that it is clear from the amended plaint that the plaintiffs are not claiming plot no 20591/119 either as registered or as beneficial owners at all; that the plaintiffs lack locus standi to prosecute any claim over parcel no 119 in the present suit; that plot no 79 is the subject matter of another pending suit and the commencement of the presents suit is an abuse of the process of the court.
3. In his replying affidavit the 1st plaintiff, without stating if he is authorized to swear on behalf of the 2nd plaintiff states as follows; that the applicant is a registered owner of plot 119, that the certificate of title in which the 5th defendant is registered as owner is a false document, and the plaintiffs seek to have the allegedly falsified certificate of title revoked. They also seek an order of rectification of records which would affect the 5th defendant and that the 5th defendant is therefore a necessary party.
4. I have perused the application the response and the submissions of the respondents. I found no submissions filed on behalf of the applicant. I have found considerable argument raised in the filed documents. Evidence for and against the application is by way of affidavit evidence which I do not think is the proper kind of evidence by which to determine the controversies it raises. I also observe that the parties will have an opportunity to present their evidence at the hearing which will address the issues raised in the motion. For that reason, I disallow the application dated 11/5/2023 with no orders as to costs. I order that the parties shall appear before the court at Nakuru on 30/11/2013 for the fixing of a hearing date for the main suit.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 15TH DAY OF NOVEMBER 2023.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

