



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

ELC. NO.116 OF 2018(OS)

LUKE MUHANJI & 23OTHERS.....PLAINTIFFS

VERSUS

RICHARD OGWARO J. MUHOMA.....DEFENDANT

RULING

INTRODUCTION

1. This is a Ruling in respect of a Notice of Motion dated 9th October, 2020 in which the Applicant seeks to be joined in these proceedings as a Plaintiff and that the Ruling of the court made on 14th August 2020 be reviewed. The Applicant contends that he is owner of Plot No.33 which is within L.R No.PIONEER/NGERIA BLOCK 1(EATEC)1067 (suit property).
2. The Applicant further states that in a Ruling made on 3^{1st} July, 2019 Pursuant to an extracted order issued on 14th August, 2020, the court directed that *L.R.NO.PONEER/NGERIA BLOCK 1 (EATEC)1067* be registered in the name of Luke Muhanji and Francis Mwala who would then transfer it to 22 others named in this suit.
3. The Applicant states that he was not aware of this suit and that his name was omitted from the list of the Plaintiffs. He argues that a look of the Ruling of court shows that he will not get any land as he was not one of the Plaintiffs.
4. The Applicant argues that there is a clear error on the record and that the Ruling of 14th August, 2020 should be reviewed.
5. The Plaintiffs/Respondents did not file any replying Affidavit or submissions. I have considered the Applicant's Application as well as his submissions. There are two issues to be determined. The first is whether the Applicant should be joined in these proceedings. The second is whether the Ruling of 14th August, 2020 should be reviewed.
6. The suit herein was filed through an originating summons filed on 22nd October, 2018. The suit was filed by 24 Plaintiffs. The Defendant swore a replying affidavit on 16th April, 2019 in which he admitted that he sold ***L.R NO.PIONEER/NGERIA/BLOCK 1(EATEC)1067*** to Southern Wareng' Company in 2003 and that though he had the original title, he had no interest in the land.
7. When this suit came up on 31st July, 2019 for hearing, the Plaintiffs testified and closed their case. When the Defendant started testifying, it became apparent that he was not opposing the Plaintiffs' suit. He stated that he was willing to transfer the land to whoever the court directed. It is after this that the Plaintiffs agreed that the land be transferred to the names of Luke Muhanji and Francis Mwala who would in turn transfer the same to the other co-plaintiffs.
8. The Defendant later refused to transfer the Land as agreed. The Plaintiffs' came back to court and sought that the Deputy Registrar of this court do sign all the documents to facilitate the transfer of the land from the Defendant to Francis Mwala and Luke Muhanji.
9. The Applicant now wants to be joined in these proceedings. The Applicant cannot be joined in this suit as there are no proceedings pending. A judgment was entered on 31st July, 2019 in favour of the Plaintiffs who commenced the process of execution. The land had even been surveyed if a mutation in the file is anything to go by.
10. Though the Applicant claims that he was not aware of this suit, he failed to disclose that he has filed a case against Luke Muhanji and Francis Mwala in Eldoret Chief Magistrate ELC.No.108 of 2020. There is therefore no way he can be joined in a case which is already concluded. The Applicant admitted that he has Plot No.13 within the land in dispute. He should pursue his interest in Plot 33 through the case he has already filed in the Chief Magistrate's Court.
11. On the second issue, there is no error on the record of the Ruling of court made on 31st July, 2019 which the Applicant wrongly states

that it was made on 14th August, 2020. The date of 14th August, 2020 is the date the order arising from the Ruling of 31st July, 2019 was issued. The fact that the Applicant's name was not among the Plaintiffs does not amount to an error on the face of the record to warrant a review. I therefore, find no merit in this Application which is dismissed with no order as to costs

It is so ordered.

DATED SIGNED AND DELIVERED AT ELDORET ON THIS 27TH DAY OF JANUARY, 2022.

E. OBAGA

JUDGE

IN THE VIRTUAL ABSENCE OF PARTIES WHO WERE AWARE OF THE DATE OF DELIVERY OF RULING.

COURT ASSISTANT: MERCY

E. OBAGA

JUDGE

27.01.2022