



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT ELDORET**

**JUDICIAL REVIEW NO.E004 OF 2021**

**IN THE MATTER OF ARTICLE 162(b), 159(2)(d) OF THE CONSTITUTION OF KENYA 2010 AND**

**IN THE MATTER OF LAW REFORM ACT SECTION 8(1) AND 9 BETWEEN  
REPUBLIC.....APPLICANT**

**VERSUS**

**UASIN GISHU COUNTY GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR UASIN GISHU COUNTY.....2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR .....3<sup>RD</sup> RESPONDENT**

**DIRECTOR OF SURVEYS MINISTRY OF LANDS.....4<sup>TH</sup> RESPONDENT**

**HOUSING AND URBAN DEVELOPMENT**

**PRINCIPAL SECRETARY MINISTRY OF LANDS.....5<sup>TH</sup> RESPONDENT**

**HOUSING AND URBAN DEVELOPMENT**

**LAND ADJUCIATION AND SETTLEMENT OFFICER.....6<sup>TH</sup> RESPONDENT**

**UASIN GISHU COUNTY**

**DIRECTOR OF LAND ADJUDICATION &.....7<sup>TH</sup> RESPONDENT**

**SETTLEMENT MINISTRY OF LANDS HOUSING AND**

**URBAN DEVELOPMENT. ATTORNEY GENERAL.....8<sup>TH</sup> RESPONDENT**

**EX-PARTE:.....1) KESESS KELCHIN FARM LIMITED**

**2) SHADRACK TUWEI RONO**

**3) WILLIAM KIPSOI SIGEI**

**4) SAMSON K. KIRWA**

**RULING**

**INTRODUCTION**

1. This is a Ruling in respect of two Applications. The first Application is dated 5<sup>th</sup> July, 2021. It seeks the striking out of the names of the 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants from these proceedings. The second Application is dated 15<sup>th</sup> September, 2021. It seeks joinder of 416 individuals as interested parties to these proceedings.

## **BACKGROUND**

2. The proceedings herein relate to L.R NO.9621 measuring about 2005acres. This property was originally owned by a colonial settler known as Eileen Nabel Williams. This property was transferred to Kesess Kelchin Farm Limited (Ex-parte Applicant) on 30<sup>th</sup> December 1968.

3. Though the shareholders of the Ex-Parte Applicant have settled on the property, the property is yet to be fully subdivided and ownership documents given to the shareholders. This is due to infighting amongst the directors and shareholders as to membership of the shareholders in the company register.

## **THE FIRST APPLICATION**

4. The 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants contend that they did not give instructions to the firm of Ms. Bungei & Murgor Advocates to file this Judicial Review proceedings. They state that they became aware of these proceedings from social media and that they had no knowledge of the same and that their consent was not sought.

5. The 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants' Application was opposed through a Replying Affidavit sworn by the 2<sup>nd</sup> Ex-parte Applicant who is one of the Directors of the 1<sup>st</sup> Ex-parte Applicant. The deponent of this Replying Affidavit states that the 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants are directors of the 1<sup>st</sup> Ex-parte Applicant and that they have not tendered their resignations from the Company and cannot therefore purport to isolate themselves from this case when the decision to file it was taken by the company which instructed Ms. Bungei & Murgor to file the same.

6. The 2<sup>nd</sup> Ex-parte Applicant/Respondent further states that the 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants have not given any reason as to why they want to pull out of this case and that the intention of the two is to frustrate efforts by the 1<sup>st</sup> Ex-parte Applicant to subdivide the land held by the company.

7. In a further Affidavit sworn on 28<sup>th</sup> October, 2021, the 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants argue that there is no evidence that there was a meeting of the company held where the issue of subdivision of the land was agreed on and the firm of Ms. Bungei and Murgor Advocates instructed to act for the company.

8. The parties were directed to file written submissions. The 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants filed their submissions dated 28<sup>th</sup> October, 2021. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents did not file any submissions I have considered the Application by the 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants as well as the opposition to the same by the Respondents. I have also considered the submissions by the 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants. The only issue for determination is whether the Applicants have demonstrated grounds for removal of their names from these proceedings.

9. The 4<sup>th</sup> and 7<sup>th</sup> Ex-parte Applicants have not denied the fact that they are directors of the 1<sup>st</sup> Ex-parte Applicant. Though I cannot see a resolution authorizing the firm of Ms. Bungei & Murgor Advocates to file this suit, the fact remains that the Applicants are directors of the 1<sup>st</sup> Ex-parte Applicant. All the other directors of the 1<sup>st</sup> Ex-parte Applicant have been named in this suit. The 4<sup>th</sup> and 7<sup>th</sup> Applicants have not given any plausible reason for seeking to pull out of this case. If there are any differences between them and their co-directors, that is not a reason for pulling out of this suit. I find no merit in this Application which is dismissed with costs to the Respondents.

It is so ordered.

## **THE SECOND APPLICATION**

10. The Applicants herein contend that they own individual parcels within L.R.No.9621 and that they approached the 1<sup>st</sup> Respondent to assist in the subdivision of L.R NO.9621. The 1<sup>st</sup> Respondent started the process of subdivision but the process was stopped due to these proceedings. The Applicants contend that as they own land within L.RNo.9621, any decision which will be made herein will affect them adversely and therefore it is necessary that they be joined in these proceedings to defend their interest.

11. The Applicants argue that failure to subdivide the land has been caused by the Ex-parte Applicants/Respondents and that there have been numerous suits filed touching on the land which have derailed the process of subdivision. The Applicants contend that there are two parallel registers and that the Ex-arte Applicants/Respondents want to use a false register to subdivide the land.

12. The parties were directed to file written submissions. The proposed, interested parties/Applicants filed their submissions dated 18<sup>th</sup> October, 2021. The Ex-parte Applicant/Respondent neither filed a replying affidavit nor submissions.

13. I have considered the Applicants' Application and their submissions. Some of the Applicants are not shareholders of the 1<sup>st</sup> Ex-parte Applicant. They are purchasers who are in occupation of the land. The Ex-parte Applicants/Respondents want the court to order that the subdivision be undertaken in accordance with the shareholding as shown in payments made between 1968 and 1978. If the Ex-parte Applicants/Respondent were to succeed in their suit, the Applicants might be affected. It is therefore clear that the Applicants have

demonstrated that they have an interest in the land and should be allowed to ventilate their claim in these proceedings. I therefore, allow the Applicants' Application as prayed. The Applicant are at liberty to file pleadings in this matter.

It is so ordered.

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

**E. OBAGA**

**JUDGE**

**IN THE VIRTUAL PRESENCE OF;**

**MS.TUM FOR 4TH AND 7TH EX-PARTE APPLICANTS**

**MS. KIBET FOR MR.KIBII FOR INTERESTED PARTIES**

**MS. NJIRU FOR 1ST RESPONDENT**

**COURT ASSISTANT: MERCY**

**E. OBAGA**

**JUDGE**

**27.01.2022**