



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. E006 OF 2021

FRANCIS KIMATHI.....1ST PLAINTIFF

JACOB MWENDA..... 2ND PLAINTIFF

PETER NTURIBI.....3RD PLAINTIFF

VERSUS

ATTORNEY GENERAL.....1ST DEFENDANT

LAND REGISTRAR MERU CENTRAL.....2ND DEFENDANT

AND

RAEL NYAWIRA NYAMU (Applying and suing as legal representative of

SIMON MURIUKI KARANGI – Deceased).....3RD DEFENDANT

RULING

1. Through a notice of preliminary objection dated 1.3.2021 the respondents oppose the application and the plaint dated 20.1.2021 on the grounds that:-

- 1) Its defective, misconceived, mischievous, unsustainable and an abuse of the court process.
- 2) The plaintiff has no locus standi to file the suit.
- 3) The suit is time barred.
- 4) Matters raised fall under the family court.
- 5) There is an alternative dispute resolution mechanism which the plaintiff has not exhausted.
- 6) The same is bad in law aimed at defeating the cause of justice.

2. In response the plaintiffs have filed a reply to the preliminary objection dated 10.3.2021 on the basis that:-

- a) The preliminary objection is not properly before the court as it does not specify the defects.
- b) There is a confirmed grant of letters of administration.
- c) They discovered the grant after they obtained the documents from the 2nd respondent hence by virtue of Section 26 (c) of Cap 22 they are properly before court
- d) Succession Cause No. 6 of 2019 before the Chief Magistrate Meru was finalized hence the ELC court has powers.

e) The Preliminary objection contravenes Section 1A and 1B of the Civil Procedure Act and Article 159 (2) (d) of the Constitution.

3. By a plaint dated 20.1.2021, the plaintiffs have sued the defendants for fraudulently subdividing **L.R No. Ntima/Ntakira/421** into **L.R No. 2389** and transferring the same to unknown persons which to them was an abuse of their office and failure to transfer the land to them.
4. The plaintiff prayed for the 1st defendant to transfer ½ share to them and declaratory orders that the subdivision of **L.R Ntima/Ntkira/421** was contrary to the **Land Control Board Act Cap 402** and the land reverts to the family.
5. Accompanying the plaint was a notice of motion dated 20.1.2021 in which the plaintiffs sought leave to file an application against the defendants for fraud, and orders compelling the 2nd respondent to transfer a share of the suit land to them. The application is supported by an affidavit sworn by Francis Kimathi on 20.1.2021.
6. The grounds are that the defendants without their knowledge subdivided **L.R No. Ntima/Ntakira/421** into two portions namely 2388 and 2389 which was transferred to a stranger; the land belonged to their late grandfather – Mugwika M’Mbogori and it was an abuse of their office.
7. The applicants rely on a copy of the title deed and a grant of letters of administration in **Meru CMCC Succession Cause No. 6 of 2019** in favour of the 1st plaintiff issued on 2.8.2019.
8. With leave of court the 3rd defendant came on board and filed a defence dated 20.12.2021 claiming **Parcel No. Ntima/Ntakira/2389** was lawfully registered in the name of her deceased father Simon Muriuki Karangi. He stated the plaintiffs have no locus standi to bring the suit, the suit offends **Section 12 of the Civil Procedure Act** and **Section 7 of the Limitation of Actions Act**, the court has no jurisdiction to entertain it and is an abuse of the court process.
9. The defendants though served with summons have not filed any defence. Pleadings are yet to come to a close in this matter.
10. The plaintiffs filed a notice of motion dated 6.12.2021 seeking to amend the plaint.
11. **Order 1 rule 9** states no suit shall be defeated by reason of misjoinder or non-joinder of parties. The court is yet to give directions under **Order 11 of the Civil Procedure Rules**.
12. The preliminary objection raises eight points. Ground one is, the plaintiff lack locus standi. The case is based on fraud and abuse of office. As to when the subdivisions and transfer allegedly occurred, evidence shall be needed to establish the fraud. So the issue of the period of 34 years is a matter of fact to be established at the hearing.
13. Further, a grant has been issued and parties allude to the fact a succession suit was filed before the chief magistrate Meru. All these are facts to be ascertained at the hearing and during pre-trial case conference.
14. My findings are the points of preliminary objection by the defendants raise no pure points of law. They are based on factual evidence which is disputed by the parties hence fails to meet the threshold of **Mukisa dictum**.
15. Regarding the application dated 20.1.2021, the prayers sought are unmerited at this juncture. The plaintiffs have already filed the suit and secondly the prayers sought cannot be granted at an interlocutory stage without hearing viva voce evidence from both sides. I therefore decline to grant any interim orders at this stage.
16. Consequently both the applications dated 20.1.2021 and the preliminary objection dated 1.3.2021 are dismissed with costs.
17. Regarding the application dated 6.12.2021, the same is allowed. The amended plaint shall be filed and served within 30 days from the date hereof and the defendants to be at liberty to file defences within 21 days upon service.
18. Parties to comply with **Order 11** within 60 days from the date hereof.
19. Mention for pretrial directions on 28.3.2022.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 26TH DAY OF JANUARY, 2022

In presence of:

Kendi for respondent

Ndubi - absent

Court Assistant - Kananu

HON. C.K. NZILI

