



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 10 OF 2019**

**DAVID KINUTHIA KIMANI.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**JOSEPH NGATIA MUCHIRI.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**-VERSUS-**

**SIGMA FEEDS LIMITED.....DEFENDANT/OBJECTOR**

**RULING**

This ruling is on the Notice of Motion dated 17<sup>th</sup> March, 2021 which is under **Section 3A** of the **Civil Procedure Act** and **Order 40 Rules, 1, 2, 3, 4 and 10 of the Civil Procedure Rules** seeks the following orders;

1. Full execution of the Judgment dated 6/2/2015 which restricted the Defendant or anybody claiming through them from any dealing with LR. KAJIADO/KITENGELA/2334, 3855, 3856, 3858, 3859, 3860, 3861 and 3862.
2. Costs of the suit.

The grounds for seeking the above orders are that the judgement herein has not been implemented, yet the Defendant is in the process of unlawfully subdividing the suit property when a pending boundary dispute has not been resolved.

The Plaintiff stands the risk of losing his property to the Defendant and third parties if the orders sought are not allowed.

In support of the application an affidavit sworn by one Joseph Ngatia Muchiri with three annexures has been filed. They include a copy of the decree herein dated 26/5/2015, a report of picking of perimeter boundary of the Plaintiffs L.R. KAJIADO/OLOOTOITIKOSHI/KITENGELA/2334 dated 27/2/2019 and a bundle of documents and photographs.

The Respondent filed a notice of preliminary objection dated 24/5/2021 urging that the suit be dismissed because the Judgment was delivered by a Judge who had no jurisdiction, that the Plaintiffs have abused Court process by seeking to join parties four (4) years after Judgment and that the Court lacked jurisdiction to determine the boundary dispute since the Land Registrar had not yet dealt with the dispute,

I have carefully considered the application in its entirety including the affidavit, grounds, annexures and the law relied upon by the applicant. I have also considered the response by the Defendant and the three grounds relied upon in seeking to dismiss the suit.

I find that the following issues arise.

Firstly, did the High Court have jurisdiction to issue the orders that it did?

Secondly, is it an abuse of the Court process for a party to seek to join the suit after Judgement?

Thirdly, is it the Court or the Land Registrar with jurisdiction in a dispute such as this?

On the first issue, I find that the High Court Judge had jurisdiction to issue the order that he did. **Section 3A of the Civil Procedure Act** provides;

**“Nothing in this Act shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary**

**for the ends of justice or to prevent abuse of the Court process of the Court”.**

It was necessary for the ends of justice to be met that an order of injunction be issued to restrain the Defendant from alienating land which was in dispute because it could end up alienating land belonging to the Plaintiff.

The Court acted squarely within the inherent jurisdiction under **Section 3A of the Civil Procedure Act**.

On the second issue, I find that under **orders 1 Rule 3, 8 Rule 5, 45 and Civil Procedure Rules and Article 50 (1) of the Constitution**, the Court has wide discretion in allowing joinder of parties at any stage of proceedings including even after Judgment.

The Court is not limited in ensuring that every party is afforded a fair hearing. Court Proceedings can be re-opened at any stage if the ends of justice so demand.

Finally, on the third issue it is trite law under **Section 18(2) of the Land Registration Act** that it is the Land Registrar who has jurisdiction to determine boundary disputes at the initial stage. The Court may come in later.

The learned Judge was fully aware of this and that is why he referred the dispute to the Land Registrar.

For the above reasons, I allow the application dated 17/3/2021 and dismiss the Preliminary Objection dated 24/5/2021.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17<sup>TH</sup> DAY OF JANUARY, 2022**

**M.N. GICHERU**

**JUDGE**