

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAROK

ELC NO. 22 OF 2020

SAMWEL MALAKWEN CHUMO & 55 OTHERS.....PLAINTIFFS

-VERSUS-

DISTRICT LAND REGISTRAR, NAROK.....1ST DEFENDANT

DISTRICT LAND SURVEYOR, NAROK.....2ND DEFENDANT

HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. By Notice of Motion dated 16/10/2020 the applicants sought to be enjoined in the substantive suit as defendants allowed to file a defense therein. The application is based on the grounds that the suit land belongs to the applicant and the plaintiff are trespassers as their titles were found to be with respect to land in the main forest and that if the matter is heard in the absence of the application they will be prejudiced and further that the plaintiffs may not disclose all the fact relevant to the suit. The applicant also contends that there are various Judgment pertaining to the affidavit of the suit.

2. The application was supported by the affidavit of Issack Njenga Kamunga who deponed that he is the Chairman of the applicants Makuyuni Farmers. He averred that the dispute between the applicants and the plaintiff dated back to 1972 where they purchased 2 parcels of land being parcels No. CIS –Mara/Ololunga/198 and 157 from Gema Holdings that boarder the plaintiff parcels No. Cis –Mara/Ololunga/ 110 which formerly belonged to Enoosokon Group Rancha. He stated that the plaintiff has encroached on the land and dispute filed before the Narok Land Dispute Tribunal which dispute was resolved in favour of the applicant and later appealed. The said decision of the tribunal to the Provincial Appeals Board and the High Court that were both in favour of the applicants.

3. The applicant contends that the application filed the instant suit in the absence of so as to continue living on the suit and it will thus be unfair if the suit herein proceeds in their absence since the plaintiff are unlawfully living on the land and they thus pray that he be enjoined in the suit as a defendant.

4. The application was opposed by the plaintiff by way of a replying affidavit sworn by the 1st defendant with the authority of his co-defendants. The plaintiff contend that the application is unmerited and an abuse of the process of the court. He stated the applicant is a non-existent and an unknown entity in law and he underserve the orders of court. The plaintiff state that a search of the applicant’s name with the register of companies and business name have both confirmed that it is unregistered. They further contend that the provision of the law cited by the applicant to be enjoined in the suit las nothing to do with the applicants herein and further that the supported affidavit to the application was signed by a different person Samuel Kamunga and that there has been no dispute between them and the applicant since they were not members of the Enosongon /Enosokon Group Ranch and are not aware of the procedure Made by the applicant.

5. I have considered the application and the replying affidavit in opposition to the said application and that being an application for joinder of a party to the suit. The ground upon which a party is joined as a party is already settled in law. However, I must state that the applicants have been given the opportunity to file their submissions if any have elected not to do so despite even respondent have written a remainder to them. It is the applicant’s contention that they are the owners of a parcel of land known as **Cis –Mara/Ololinga/198** that bounders the plaintiff suit land that known as **Cis-Mara/Ololunga/110** and that the plaintiffs have encroached on the said land and they have a suit against the defendants without their knowledge and have desirous of joining the suit as defendant. The plaintiff on the other hand argued that the applicants is non-existent entity not capable of suing and hence the application is an abuse of the process of the court. They further contend that the applicant have not met the threshold to be enjoined in the suit as they have not shown in any direct interest in the suit land. The issue for determination are thus whether the applicant is capable of suing and whether they have demonstrated a direct interest in the land.

6. On the first issue, the respondent have not annexed to the application various correspondence from the register of business names that show that indeed a section of the applicants name has returned that there is no business that is registered with the said name. The applicant has not rebutted the said claim and in the absence of such rebuttal I find that the applicant are not properly before the court and consequently, I find that the said application is an abuse of the process of the court.

7. On whether the application have shown a direct interest. In **Peter Nsande Gitau =vs= Thomas Museni Oseko (2017) eKLR** stated the principal for determining whether or not to join a party to a suit being the most demonstrated that he is a necessary party, that a ruling must flow form the proposed defendant to the plaintiff and that the ultimate decree of the court may not be enforced without their presence in the instant application. The applicants have not demonstrated that the suit between the plaintiff and the defendant’s touches on them directly and that the participation in the proceedings will lead to the effective determination of the suit. Since in the pleading I have not found any claim that the plaintiffs have against the application or against their parcel of land.

8. Having found the above, I find that the Notice of Motion dated 16/10/2020 is not merited and I thus dismiss the same with costs.

DELIVERED SIGNED AND READ AT MIGORI THIS 16th DAY OF MARCH 2022 via email.

MOHAMED N. KULLOW

JUDGE