



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
CIVIL SUIT NO. 60 OF 2012

FRIDA MBITHE KIPOTO 1ST PLAINTIFF

REHEMA KANINI IKUMI 2ND PLAINTIFF

FAITH TATU CHAI 3RD PLAINTIFF

-VERSUS-

SULTAN MALATU CHAI1ST DEFENDANT

A.O. BAUSUF & SONS LIMITED 2ND DEFENDANT

KIRENGA CHAI NGAO3RD DEFENDANT

MUKEI CHAI NGAO 4TH DEFENDANT

R U L I N G

BACKGROUND

[1] Abdalla Chai Ngao (now deceased) is the father of the plaintiffs and 1st, 2nd and 3rd defendants and 10 other children (total 16). The deceased had three wives namely Rhoda Musili Chai, Kirenga Chai Ngao and Mukei Chai. He had large tracts of land in which he set his wives separately and her children. he died on 4th July 2009. At the time of his death none of his parcels had a title deed. He had however been allocated the suit land measuring approximately 4.337 hectares for a term from 1/7/1998 by the Government of Kenya. The plot was later set apart and surveyed as Plot No. 1887 - Kadzonzo/Madzimbani/Adjudication Section (LR.11492/467).

None of the deceased wives and children took letters of administration of his estate until 2nd May, 2012 when the plaintiff's did so and filed this suit.

The applicants aver that they started hearing rumours that the 1st defendant had sold the suit land to the second defendant in collusion with the 3rd and 4th defendants and consequently they filed a succession cause above quoted to enable them to file this suit in which they claim inter alia, The 1st, 3rd and 4th defendant had no capacity to sell to the 2nd defendant since they had no letters of administration for the deceased's estate and had no consent with the other beneficiaries of the estate and that the purchase by the 2nd defendant was not bona fide.

The 1st defendant claims that his father (the deceased) had sold this land to a company called (K) limited with the consent of his mothers and siblings for Kshs. 4,000,000/00 whereby the deceased was paid Kshs. 400,000 by the said company. The sale for some reason did not go through and that the 2nd

defendant agreed to refund the Kshs. 400,000 to (K) Ltd and pay the deceased the rest of the purchase price. He said he refunded the Kshs. 4000,000 to (K) Ltd and paid the deceased 3,850,000 in installments between 23/12/2007 to 6th March 2009 and that the property passed to him in his fathers lifetime. He says he owed the deceased Kshs. 150,000 which he is ready to deposit on his fathers' estate.

ANALYSIS

AGREED FACTS

There is no disagreement that the suit property was allocated to the deceased. The documents filed in court by the parties support this assertion. It is also agreed that the deceased herein died intestate. No attempt to obtain letters of administration of his estate was made until the 2nd May 2012 by the plaintiffs. The succession cause is now pending in the family division herein Mombasa High Court. There is no dispute that the deceased had 3 wives and sixteen children who are his beneficiaries. There is also no dispute that the suit land was after the death of the deceased transferred to the 1st defendant as plot No. 1887 Kadzonzo/Madzimbani/Adjudication area.

ISSUES OF DETERMINATION

The issues for determination is whether

(a) The transfer of the suit land to the 1st defendant after the death of the deceased and with no letters of administration was proper and further whether it was pursuant to the alleged sale, whether the same was agricultural land requiring necessary land control consents and whether it had the consent/blessings of the other beneficiaries.

(b) Whether the 1st defendant could pass title of the suit property to the 2nd defendant under the circumstances.

(c) Whether the purchase of the suit property from the 1st defendant by the 2nd defendant was bona fide and without notice of other claims therein.

(d) Whether the plaintiff's have a genuine claim over the suit property.

All these issues are pertinent on this application. these are issues that cannot be determined in this application. they must be canvassed fully at the hearing of this suit. Parties must be tested if desirable, by cross-examination. Determining these issues herein will be tantamount to hearing the suit at an application stage. This will occasion injustice on the parties. The court cannot countenance the same.

CONCLUSION

This matter commends itself before to me for an order of status quo. I have not been convinced that there will be any prejudice to the defendants by granting such an order. Having looked at all the submissions of the respective parties, the various annexures therein ,I make the following order.

That the applicants application dated 28th May, 2012 succeeds in the following terms, that pending the hearing and determination of this suit, the defendants themselves, their servants and/or agents are restrained from further construction of structures, developing, selling transferring and/or assigning interest in plot no. 1887 - Kadzonzo/Madzimbani Adjudication Section (LR. 11492/467). The costs of this application shall be in the cause.

Dated and delivered in open Court at Mombasa this 18th day of October 2013.

S.N. MUKUNYA

JUDGE

18.10.2013