



**Rotich & another v Chuma & 2 others; Kaptoror Holdings Limited (Interested Party)
(Environment & Land Case 553 of 2013) [2022] KEELC 2861 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2861 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 553 OF 2013**

EO OBAGA, J

MAY 12, 2022

BETWEEN

TOM ROTICH 1ST PLAINTIFF

KIPRONO KIBORE 2ND PLAINTIFF

AND

HOSEA KIPLAGAT CHUMA 1ST DEFENDANT

DANIEL CHEBET 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

AND

KAPTOROR HOLDINGS LIMITED INTERESTED PARTY

RULING

1. This is a ruling in respect of a notice of motion dated 30th June, 2021 in which the Applicant seeks the following orders:-
 1. Spent
 2. That this Honourable Court be pleased to declare that the plaintiff's claim, 2nd defendant's claim and the entire suit herein exclusively relates to LR No 11205 and all documents making joint reference to LR No 11205 and L.R No 10394 shall be relied upon by the 2nd Defendant and the Court Limited to the extent that it deliberates on the suit property herein, LR No 11205.
 3. That this Honourable court be pleased to declare that the 2nd defendant's letter dated 13th June, 2019, requesting the Chief Land Registrar to suspend all dealings relating to LR No 10394



on the account of this case was erroneously issued and that the ownership of LR No 10394 is now res-judicata.

4. That the 2nd defendant be ordered to officially withdraw the letter dated 13th June, 2019 within TEN (10) days of the making of this order; failing which the Deputy Registrar of this Honourable court to forthwith write to the Chief Land Registrar withdrawing the said letter.
5. That the costs of this application be provided for.

Background:

2. The applicant had sought similar orders in its application dated November 30, 2020 in which it had sought among other orders that it be joined as an interested party in these proceedings and that any document filed herein touching on LR No 10394 and particularly a letter dated June 13, 2019 from Ms. Kabichy & company Advocates which was addressed to the Chief Land Registrar be expunged from the record.
3. The applicant's application of November 30, 2020 was allowed to the extent that it was joined in these proceedings as an interested party. The judge in a ruling delivered on June 8, 2021 declined to address the issue of expunging of documents arguing that she could not do so before the applicant was made a party.

Applicant's Contention:

4. The applicant now contends that as it has been allowed in these proceedings, its prayer for expunging documents touching on LR No 10394 should be allowed. The applicant argues that the plaintiff's claim in this suit only relates to LR No 11205 and has nothing to do with LR No 10394, whose ownership was determined in Nairobi HC Judicial Review No. 1411 of 2001 Between the Applicant and Registrar of Titles vide a ruling delivered on 30th July, 2003.
5. The Applicant contends that the 2nd defendant/respondent is intent on trying to lay claim to LR. No. 10394 whereas the pleadings filed by him show that his interest is on LR No 11205. The applicant argues that if its application is allowed and any document referring to LR No 10394 expunged and the 2nd defendant/respondent ordered to officially withdraw the letter dated June 13, 2019, there will be no need for the applicant to remain in these proceedings.

Second Defendant/Respondent's contention:

6. The 2nd defendant/respondent contends that he was not a party to the judicial review proceedings in Nairobi and that the expunging of the documents which refer to LR No 10394 will prejudice his case as he will not be able to prove his case on LR No 11205 without reference to LR No 10394. He further states that the two parcels were leased together by the 1st defendant/respondent who was unable to repay the loan which he had taken. Arrangements were made to help him offset the loan and that the two properties were to be owned by him and other persons.
7. The 2nd defendant/respondent argues that he has payment receipts showing that he paid for LR No 10394. He states that any previous averments that he was not owner of LR No 10394 were erroneous as he signed the documents without properly seeing them as he had eye problems as confirmed by his doctor. He argues that his lawyer's letter to the Chief Land Registrar was meant to secure his interest and expunging it will greatly prejudice him.



Analysis:

8. I have carefully considered the applicant's application as well as the opposition to the same by the 2nd defendant/respondent. I have also considered the submissions filed herein. The only issues for determination are firstly whether the documents touching on LR No 10394 should be expunged from the record and secondly whether the letter of June 13, 2019 addressed to the Chief Land Registrar should be ordered withdrawn.
9. There is no contention that the two parcels were owned by one individual known as Petros Jacob De Jager who is said to have relocated to South Africa decades ago. There is also no contention that the owner at some stage leased the two properties from the Agriculture Ministry who had taken over the two properties. There are documents which the 2nd defendant/respondent filed in support of his case. These documents touch on both LR No 10394 and 11205. The Applicant contends that some of these documents are forgeries. If this be the case, then the prayer for expunging these documents cannot be granted in an application such as this.
10. The Applicant has been admitted as an interested party. It was directed to file its documents in proof of its claim. It cannot come to court by way of an application seeking to expunge the said documents. The 2nd defendant/respondent was not a party to Nairobi Judicial review matter. This suit cannot therefore be res judicata as the issues he is raising were not heard and finally determined in those proceedings. I therefore find that the documents sought to be expunged cannot be expunged in the manner the Applicant is seeking.
11. Equally, this court will not make an order directing that the letter of June 13, 2019 addressed to the Chief Land Registrar be expunged as this letter is meant to preserve LR. No 10394 pending the hearing and determination of this suit.

Disposition:

12. From the above analysis, I find that the applicant's application is devoid of merit. The same is dismissed with costs to the 2nd defendant/respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 12TH DAY OF MAY, 2022.

E. OBAGA

JUDGE

In the virtual presence of;

Mr. Ometo for Ms. Adunga for Interested party.

Mr. Ruto for Mr. Kirui for 2nd Defendant.

Ms. Cheruiyot for 3rd Defendant.

Court Assistant -Albert

E. OBAGA

JUDGE

12TH MAY, 2022

