



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT 210 OF 2006

WILLIAM KIMUTAI A. SINEI.....PLAINTIFF

VERSUS

KALENJIN ENTERPRISES LTD.....DEFENDANT

RULING

The plaintiff, William Kimutai Sinei filed suit against the defendant, Kalenjini Enterprises Co. Ltd (*Kongoi Farm*) seeking various reliefs from the court touching on the ownership of what he referred to as plots Nos. **45, 60, 69** and **86** surrounding Kongoi Farm house which he claimed he had purchased from the defendant. The plaintiff, in essence was seeking to be declared the owner of the said parcels of land. The defendants were duly served. The defendant filed a defence by which it denied the plaintiff's claim. During this period in the suit, both the plaintiff and the defendant acted in person. On the 23rd August 1999, the defendant appointed the firm of Mirugi Kariuki & Company Advocate to act on its behalf. On the same day, consent was filed in court compromising the said suit.

The terms of the said consent of the parties were as follows;

“That judgment by consent be entered in favour of the plaintiff in the following terms;

- 1. That it is hereby declared that the farm house in Kongoi Farm of the defendant company together with the compound as fenced around it and which comprises of plots Numbers 45, 60 and 86 among others is the property of the plaintiff.*
- 2. That the access roads through the aforesaid compound are hereby ordered closed.*
- 3. That each property to bear his or its own costs.”*

The consent of the parties was adopted as the judgment of the court on the 24th August 1999. The plaintiff extracted a decree pursuant to the said consent judgment and sought to execute the same. However, in a strange twist of events, instead of executing the said judgment against the defendant, the plaintiff applied on the 22nd February 2000 to execute the same against Benjamin Keter and Elijah Yeben. The plaintiff applied to execute the said decree *“by way of eviction (of) Benjamin Keter and Elijah Yeben residents of plots Nos.45, 60 and 86 respectively being members of Kalenjini Enterprises Ltd (**Kongoi Farm**) the property of the decree holder.”* It should be noted that up to that stage of the proceedings, the said Benjamin Keter and Elijah Yeben were not made parties to the suit neither did they participate in the signing of the consent judgment.

The plaintiff appears to have been frustrated into executing the said decree against persons who were not parties to the suit. Even though he purported to amend his plaint pursuant to the amended plaint dated the 4th December 1998, and even though the plaintiff purported to seek orders declaring the allocation of the said parcels of land to Benjamin Keter and Elijah Yeben to be null and void, the plaintiff did not deem it appropriate or necessary to enjoin the said Benjamin Keter and Elijah Yeben to the suit. The two affected parties became aware of the suit and its implication to their ownership of the said parcels of land. Elijah Kiplagat Kipkemei filed a “*defence*” in person denying the claim by the plaintiff. It later emerged in a subsequent application filed by the plaintiff on the 7th November 2001 that title deeds in respect of the said parcels of land had been issued to the two claimants. The titled deeds issued to Benjamin Kiprotoch Keter was in respect of parcels No. **Molo South/Kersoi Block 5/45** and **Molo south/Kersoi Block 5/60**. In the said application, the plaintiff sought an order of the court canceling the said titles. The said application is yet to be heard and determine.

It was in the context of this muddled state of affairs that the said Benjamin Keter made an application to set aside the consent judgment entered between the plaintiff and the defendant in so far as it affected his said parcels of land. The said Benjamin Keter referred himself as the 2nd defendant yet upon perusal of the proceedings of the court there is no indication that he had been enjoined to this suit as a defendant. It was imperative that before the said Benjamin Keter made any application before this court, he had to apply to be enjoined to this suit. No matter. Taken in the context of the jumbled proceedings in the suit, Benjamin Keter’s transgression appears as minor. The plaintiff and the defendant raised a preliminary objection to the application made by the said Benjamin Keter on the premise that he had executed the consent which led to the decree which the plaintiff is now seeking to execute against him. As stated earlier in this ruling, the said Benjamin Keter is neither a party to this suit nor did he participate in the execution of the said consent that led to judgment being entered against the defendant. The said consent was executed as between the plaintiff and the defendant. The said consent purports to affect the land ownership rights of persons who were not parties to the suit.

I have agonized on the best way to resolve the confusion in the proceedings in this case so as to enable the parties to be put on the path where the real issues in controversy between them may be determined in an orderly and procedural fashion. The pleadings in this suit were initially filed in person by the parties themselves. The said pleadings fell short of legal requirements. The parties to this suit have now appointed advocates to act on their behalf. Instead of sorting out the mess, the said advocates have gone ahead and perpetrated the confusion. This court is of the view that the best way the muddle and confusion in this case can be resolved is by this invoking its inherent jurisdiction under **Section 3A** of the **Civil Procedure Act** to make appropriate orders that would clear the confusion in the proceedings, bring clarity to the case and put the litigating parties herein on the correct path to resolving the matters in dispute. I therefore make the following orders which will be binding on all the parties who have so far been affected by these proceedings;

- (i) ***I hereby set aside the consent order entered between the plaintiff and the defendant in so far as it purported to affect the land ownership rights of Benjamin Keter and Elijah Yeben (Also known as Elijah Kiplagat Kipkemoi).***
- (ii) ***The plaintiff is granted leave to amend his plaintiff so that he may enjoin the said Benjamin Keter and Elijah Yeben (also known as Elijah Kiplagat Kilemoi in the suit).***
- (iii) ***The plaintiff shall serve the said amended plaint to the defendant and the enjoined parties within thirty (30) days of today’s date.***
- (iv) ***The defendant and the enjoined parties shall be at liberty to file defence or reply to the amended plaint.***
- (v) ***All the pleadings which were irregularly filed by the persons who will be enjoined to this suit are hereby struck out with no orders as to costs.***
- (vi) ***Status quo in respect of the disputed parcels of land shall be maintained pending the giving***

effect to the orders of this court. Thereafter any party shall be at liberty to apply.

(vii) In the circumstances of this case, since all the parties involved were to blame in one way or the other in the creation of the state of confusion in the proceedings, I will make no orders as to costs. Each party, up to the stage of these proceedings, shall bear his or its own costs.

DATED at NAKURU this 7th day of December 2007

L. KIMARU

JUDGE