



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 231 OF 2012

MARY CHEPWAMBOK.....1ST PLAINTIFF

RAPHAEL KIMURSI TANUL.....2ND PLAINTIFF

VERSUS

PAULINE CHEPKEMBOI.....DEFENDANT

RULING

[NOTICE OF MOTION DATED 23RD JULY, 2020]

1. **Mary Chepwambok**, the 1st Plaintiff filed the application dated the 23rd July, 2020 seeking for the court of Appeal decision **CACA No. 83 of 2017**, in respect of **ELC Petition No. 11 of 2015**, to be adopted as judgment in this case, and the Defendant's document dated 2nd August, 1972 that is subject to police investigations in **Inquiry File No. 7 of 2018**, be taken as forged. The application is supported by the affidavit sworn by **Mary Chepwambok** on the 23rd July, 2020.

2. The application is opposed by the defendant through the replying affidavit sworn by **Pauline Chepkemboi** on the 11th January, 2021.

3. That when this matter came up for mention on the 3rd November 2020, the Court noted that the 1st Plaintiff's application detailed above had not been dealt with. That though the 1st Plaintiff who is in person was absent, the Court gave directions on filing of replies and written submissions in the presence of the learned Counsel for the 2nd Plaintiff and Defendant. The Court also directed the 2nd Plaintiff to ensure that the 1st Plaintiff was served with the order made. That following the subsequent mention of 2nd March 2021, only Counsel for the Defendant attended. The Counsel informed the Court that they had filed and served their replying affidavit and written submissions. The submission is dated the 24th February, 2021.

4. The following are the issues for the Court's determinations;

(a) Whether the issues herein have been determined in Court of Appeal Civil Appeal No. 83 of 2017.

(b) Whether the 1st Plaintiff has made a reasonable case for entry of summary judgment.

(c) Who pays the costs of the application?

5. The Court has carefully considered the Notice of Motion, the affidavit evidence by the 1st Plaintiff and Defendant, the written submissions, superior court's decisions cited and come to the following conclusions;

(a) That from the Replying affidavit, proceedings and judgments attached to the 1st Plaintiff's supporting affidavit sworn on the 23rd July 2020, **Eldoret ELC Petition No. 11 of 2015** was between Joel Kenduiywa as Petitioner, and the District Criminal Investigations Officer Nandi, Attorney General, Francis Siratei Missos, Andrea Ruto and Pauline Chepkemboi as the 1st to the 5th Respondents, respectively. That petition was struck out with costs on the 1st March, 2017 after which, the Petitioner preferred an appeal being **Court of Appeal Civil Appeal No. 83 of 2017**. That the appeal was dismissed with costs to the 3rd to 5th Respondents on the 28th November, 2019. That as can be seen in the said documents, the 1st Plaintiff herein was not a party in the petition or the subsequent civil appeal.

(b) That from the heading of the ruling of 1st March, 2017 in **ELC Petition No. 11 of 2015**, **Joel Kenduiywa**, the petitioner, had among others sued for restitution of **Nandi/Kamobo/914**, but he lost the claim and the appeal he filed to the Court of Appeal. That

the Plaintiff dated 23rd January, 2006 at paragraphs 3, 4, 13, 14, 15, 24 and the prayers thereof leaves no doubt that the suit properties in this case are Nandi/Kamobo/913 and 2825. That the Defendant's statement of defence as dated 29th March, 2006 at paragraph 10 indicates that Nandi/Kamobo/914 is also known as 2825.

(c) That as the relationship between the 1st Plaintiff and the parties in **ELC Petition No. 11 of 2015** and the subsequent appeal is not clear at this stage, the Court is unable to understand how the decisions in those matters impacts on the issues before this court in a way that it could be the basis of summary judgment being entered without hearing the parties and deciding on the issues on merit.

(d) That the typed proceedings shows that the 1st Plaintiff testified as **PW1** on the 1st March, 2017. That on the same date one Kipserem Kemboi testified as **PW2**. That the two witnesses were heard before *Ombwayo J*, who has since left on transfer to Environment and Land Court, Kisumu. That it is only fair and just for the parties to concentrate in having the remaining witnesses and parties heard without any further delay as obligated by **Section 1A(3) of the Civil Procedure Act Chapter 21 of Laws of Kenya**.

(e) That as the 1st Plaintiff's application is without merit, then under **Section 27 of the Civil Procedure Act**, the Defendant is entitled to costs for she defended the notice of motion.

6. That flowing from the foregoing, the 1st Plaintiff's notice of motion dated the 23rd July, 2020 is without merit and is dismissed with costs to the Defendant.

Orders accordingly.

DELIVERED VIRTUALLY AND DATED AT ELDORET THIS 21ST DAY OF APRIL, 2021.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiffs: No appearance.

Defendant: No appearance.

Counsel: Mr. Kandie for Defendant.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.