



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC SUIT NO. 172 OF 2018

MIIMI OLE KESANG'A NAKEEL.....PLAINTIFF

-VERSUS-

JULIUS KIOKO KANGOGO AND SCOLASTICA MUMBUA KIOKO

(sued as the beneficiaries and the ADMINISTRATORS OF THE ESTATE OF

CHRISTINE JEBOI S.K. MUTUA).....1ST APPLICANT/DEFENDANT

VERONICAH NTHOKI KIOKO.....2ND APPLICANT/DEFENDANT

PHILOMENA WANZA MUTUA.....3RD APPLICANT/DEFENDANT

STANLAUS MUTHOKA KIOKO.....4TH APPLICANT/DEFENDANT

JOSEPHINE NTHENYA MUTUA.....5TH APPLICANT/DEFENDANT

THE REGISTERED TRUSTEES OF KIANDA

FOUNDATION EDUCATION TRUST.....6TH APPLICANT/DEFENDANT

THE LAND REGISTRAR, KAJIADO COUNTY...7TH APPLICANT/DEFENDANT

RULING

This ruling is on the Notice of Motion dated 6th August, 2021. The application which is brought under **Order 7 Rules 3 16, 2, 17 (11), 2, 3, 18(1) Civil Procedure Rules (sic), Sections 1A, 1B and 3A of the Civil Procedure Act** has one main prayer which is;

(3) THAT this Honourable Court be pleased to grant leave to the Applicants/ Defendants to remove the caveat/encumbrance on land parcel number KAJIADO/KAPUTIEI/49882.

The grounds for seeking the above order are;

(a) The Defendants herein need to have the caveat/encumbrance removed so as to sell the land to pay fees for their children.

(b) The Plaintiff will not suffer any prejudice if the caveat/encumbrance is removed.

The application is supported by an affidavit sworn by Veronicah Nthoki Kioko in which she deposes, inter alia, that the Plaintiff has sued the Defendant over L.R. KAJIADO/KAPUTIEI/1764 and L.R. KAJIADO/KAPUTIEI/49882 measuring 1.88 hectares in not part and parcel of the land in dispute.

A search at the Kajiado Land Registry on 12th July, 2021 established that a caveat had been registered against the land.

The application is opposed by the Plaintiff whose counsel filed grounds of opposition dated 11th October, 2021 to the effect that;

1. The application is frivolous, scandalous, vexatious and an abuse of the Court process.

2. The advocates for the second Defendant are not properly on record and need to regularize their representation prior to filing the instant application.

In addition to the grounds of opposition, the Plaintiff has filed a replying affidavit dated 11th October, 2021. In the affidavit, the Plaintiff says that L.R. 49882 is indeed part of the disputed land and its disposal would defeat his claim to recover of about 10 acres wrongly taken away from his land.

Counsel for the parties filed written submissions on 17th January, 2022 and 27th January, 2022 respectively.

I have carefully considered the application dated 6th August, 2021 in its entirety including the entire record, the affidavits, the annexures and the submissions.

I find that there is only one issue to be decided in the application namely;

(i) Is land reference No. KAJIADO/KAPUTIEI/49882 resultant from Land No. KAJIADO/KAPUTIEI/1764?

I find that it is resultant from L.R. 1764. The Plaintiff has in paragraphs 14 and 15 of the plaint dated 2/11/2018 averred how L.R. 1764 mutated to L.R. 3919 which mutated to L.R. numbers 49878, 49879, 49880, 49881 and 49882. He has repeated this in paragraphs 9 and 10 of his witness statement also dated 2/11/2018.

The 6th Defendant or anybody else cannot therefore be heard to say that there is no nexus between the two parcels because there is.

For the above reasons, I dismiss the application dated 6th August, 2021. Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2ND DAY OF MARCH, 2022.

M.N. GICHERU

JUDGE