



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 23 OF 2019

(TOGETHER WITH ELC PETITION NO. 11 OF 2019 AND ELC NO. 78 OF 2019)

LESERU TEBESON FARMERS SOCIETY.....PLAINTIFF

VERSUS

THE NATIONAL LAND COMMISSION.....1ST DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND DEFENDANT

KENYA NATIONAL HIGHWAYS AUTHORITY.....3RD DEFENDANT

THE MINISTRY OF DEFENCE.....4TH DEFENDANT

THE ATTORNEY GENERAL.....5TH DEFENDANT

RULING

[Directions]

This ruling was prompted by the court order of 19th September, 2019 in ELC Petition No. 11 of 2019 that is in the following words:

“I notice that this current petition is related to ELC No. 23 of 2019 and 78 of 2019. ELC No. 23 of 2019 already has a date for hearing before Court 1 on the 21st to 23rd October. It would be in the interest of justice to have all the matters heard together to avoid giving conflicting orders. The matters to be mentioned before Court 1 for directions on the way forward. Mention on the 15th October, 2019.”

The three matters came before me on the 22nd October, 2019 and the learned counsel present in each of the files were requested to discuss and report whether they could agree on a common position after an hour. That when the matters were called again, the learned counsel reported that they were unable to agree on the way forward.

The court therefore heard each of the counsel present in the three matters and the following is the finding of the court;

- (a) That Mr. Mutitu, Kuria and Kioko, the learned counsel for the plaintiff, 2nd and 5th defendants and 4th defendant respectively, in ELC No. 23 of 2019 are for the consolidation of the matter with ELC No. 78 of 2019 and ELC Petition No. 11 of 2019.
- (b) That M/s Anyango and Mr. Kioko, learned counsel for the Petitioners, 1st and 3rd Respondents respectively, in ELC Petition No. 11 of 2019 also supports the consolidation of the Petition with ELC No. 23 of 2019 and ELC No. 78 of 2019. That further, M/s Anyango proposed that the Petitioners be enjoined in the consolidated suit as defendants and be allowed to file their papers setting out their claim.
- (c) That Mr. Kioko and Kuria, learned counsel for the 1st defendant and 2nd, 4th to 6th defendants respectively, in ELC No. 78 of 2019 supported the consolidation of the suit with ELC No. 23 of 2019 and ELC Petition No. 11 of 2019, while Mr. Yego, learned counsel for the Plaintiffs opposed consolidation. Mr. Yego further proposed however, that all the three matters should be heard by one court.

The court has perused the pleadings in the three matters and noted the following among others;

- (i) That in all the three matters, the National Land Commission, the Attorney General and the Cabinet Secretary for Defence, described variously as Cabinet Secretary of Ministry of Defence, The Ministry of Defence and the Kenya Defence Forces, are named as defendants/respondents.
- (ii) That the other defendants/respondents are the County Land Registrar, Uasin Gishu, Chief Land Registrar and Director of Surveys who are all public entities represented in the proceedings by the Attorney General's Chambers.

That from the submissions of the learned counsel for the Parties in the three matters, it was agreed that the suit lands in all the cases, though bearing different parcel references, have a common origin. That further, though ELC Petition No. 11 of 2019 should ideally be heard and determined separately, the proposal by the Petitioners' counsel that the Petitioners be enjoined as Defendants in the consolidated suit is a pointer that they will effectively be abandoning the petition. The court finds the proposal will enable the court to hear all the parties under one file which will not only be costs effective to the parties and the court, but also expedite the conclusion of the matters.

That the consolidation of the matters would not in the view of the court amount to any prejudice on the part of the plaintiffs in ELC No. 78 of 2019 as they will remain as co-plaintiffs in the consolidated suit.

That a perusal of the three matters have shown that the first matter to be filed was ELC No. 23 of 2019. That it is only fair that the file be the one all the future filings and proceedings will take place.

That in view of the foregoing, the court directs as follows:

- (1) That ELC No. 78 of 2019 be consolidated with ELC No. 23 of 2019 and all subsequent filings and proceedings do take place in ELC No. 23 of 2019.
- (2) That the 1st to 9th plaintiffs in ELC No. 78 of 2019 becomes the 2nd to 10th Plaintiffs respectively in the consolidated suit.
- (3) That the Petitioners in ELC Petition No. 11 of 2019 be enjoined in the consolidated suit as defendants. That further, the Petitioners do obtain copies of the Plaints in ELC No. 23 of 2019 and ELC No. 78 of 2019 from the Registry to enable them file and serve their defence with or without counterclaim in 30 (thirty) days from today. That the ELC Petition be fixed for mention after 30 days for further directions.
- (4) That as the Plaintiffs claim against the 3rd defendant in ELC No. 23 of 2019 was by consent discontinued on the 22nd October, 2019 the order of the defendants in the consolidated suit be as follows:

§ The National Land Commission

§ The chief Land Registrar

§ The Cabinet Secretary of Defence

§ The Attorney General

§ The Director of Surveys

§ The County Land Registrar, Uasin Gishu.

§ Daniel Kenduiywo and 135 Others.

- (5) That the parties who have not complied with **Order 11 of Civil Procedure Rules** to do so in 45 (forty-five) days from today.
- (6) That the matter be fixed for mention to confirm compliance before fixing hearing dates.

Dated and delivered at Eldoret this 6th day of November, 2019.

S. M. KIBUNJA

JUDGE

Ruling read in open Court in the presence of:

Mr. Mutitu for Plaintiff in ELC No. 23 of 2019.

Mr. Yego for Plaintiffs in ELC No. 78 of 2019.

M/s Anyango for Khaminwa for Petitioners in ELC Petition No. 11 of 2019.

Mr. Kioko for The National Land Commission (Defendant in ELC No. 23 of 2019, 78 of 2019 and Respondent in ELC Petition No. 11 of 2019).

Mr. Kuria for The Attorney General (on its own behalf and representing Cabinet Secretary Defence, Chief Land Registrar, Director of Surveys, Land Registrar, Uasin Gishu who are Defendants/Respondents in ELC No. 23 of 2019, 78 of 2019 and ELC Petition No. 11 of 2019)

Christine: Court Assistant