



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 28 OF 2018

ELIUD KIBITOK KETER.....1ST APPLICANT/PLAINTIFF

JOEL KIPRUTO KOSGEL.....2ND APPLICANT/PLAINTIFF

NOAH KIPKIRONG ROTICH.....3RD APPLICANT/PLAINTIFF

VERSUS

JOSEPH KIPKOSGEI BITOK.....1ST RESPONDENT/DEFENDANT

JULIUS KIPKESSIO BIRIR.....2ND RESPONDENT/DEFENDANT

LORNO AGRIBUSINESS (E.A.) LIMITED.....3RD RESPONDENT/DEFENDANT

RULING

The plaintiffs apply vide Notice of Motion dated 5.7.2018 and filed on the same date to be allowed to await the judgment in Eldoret Environment and Land Court **Case No. 261 of 2013, Joseph Kipkosgei Bitok Vs Julius Kipkessio Birir** to enable the plaintiffs consolidate this case with the current case.

The application is based on grounds that the plaintiff in Environment & Land Court Case No. 261 of 2013 is the 1st defendant in the instant case and the defendant is the 2nd defendant in the instant case and that the subject matter in Environment & Land Case No. 261 of 2013 is PIONEER/NGERIA BLOCK 1(EATEC)/11252 and the subject matter in the instant case is also PIONEER/NGERIA BLOCK 1 (EATEC)/11252.

The applicant claims that both the plaintiff and the defendant in Environment & Land Court Case No. 261 of 2013 are both defendants in the instant case touching the same subject matter and that the plaintiffs shall be prejudiced if judgment is delivered in E & L Case No. 261 of 2013 because the subject matter is the same hence the need to stay the judgment and consolidate the two cases so as to arrive to a fair and just judgment. The plaintiffs in the instant case do not deny the defendant as their member but what is in dispute is the acreage. That the plaintiff in E & L Case No. 261 of 2013 is a stranger to the plaintiffs in the instant case.

In the supporting affidavit, Eliud Kibitok Keter states that in E & L Case No. 261 of 2013 coming up for judgment on 6th day of July, 2018 where the 1st defendant herein Joseph Kipkosgei Bitok has sued the 2nd defendant herein Julius Kipkessio Birir over the same subject matter in the instant case.

He further states that he has been advised by his counsel on record M/s Murgor Advocate which advice he verily believes to be true that not unless the judgment in E & L Case No. 261 of 2013 is arrested, the plaintiffs shall be prejudiced.

That in E & L Case No. 415 of 2015, the 5th defendant Grace Chepsongok Serem has sued Ben Saina claiming the whole of parcel number Pioneer/Ngeria Block 1(EATEC)/11253.

He is further advised by his counsel on record M/s Murgor Advocate which advice he verily believes to be true that once the judgment is arrested and the two files are consolidated that is the instant case and E & L Case No. 261 of 2013 all the parties shall be given a fair hearing and the court shall be able to give a just and fair judgment to all the parties. That the subject matter in E & L Case No. 261 of 2013 is parcel No. Pioneer/Ngeria Block 1(EATEC)/11252 and in the instant case it is the same parcel of land.

He claims that initially, the mother title was Pioneer/Ngeria Block 1(EATEC)/2175 which was sub-divided into Pioneer/Ngeria Block 1(EATEC)/11252 and 11253 and the plaintiffs in the instant case are claiming the two parcels of land.

Therefore, it is only fair and just that the judgment is arrested to enable the court address the issue fairly without prejudice to the plaintiffs this is as per the advice of his counsel on record M/s Murgor which advice he verily believes to be true.

That he has been further advised by his counsel on record M/s Murgor Advocate which advice he verily believes to be true that if the judgment is not arrested in E & L Case No. 261 of 2013, the plaintiffs shall suffer great loss and will be prejudiced because the plaintiffs will not appeal against the judgment once it is delivered on 6th July, 2018. That this application has been brought promptly and in utmost good faith. That the parties that is the plaintiff and the defendant in E & L Case No. 261 of 2013 shall not be prejudiced in any way if the orders sought herein are granted.

The application is opposed by the 1st and 5th defendants on the grounds that the application is fatally defective and incompetent and untenable. That the application has been made in the wrong file and the plaintiffs/applicants are strangers in Eldoret E & L Case No. 261 of 2013.

I have considered the application, supporting affidavit and grounds of opposition and have also perused Eldoret E & L Case No. 261 of 2013 and do find that it is necessary to stay judgment in E & L Case No. 261 of 2013 as the subject matter in the above said case and this case is the same. If the court delivers judgment in the aforesaid case, there is likely to be an application for review by the parties herein. There is need to stay judgment in E & L Case No. 261 of 2013 to avoid an untidy and tardy proceedings.

I do grant orders arresting the delivery of judgment in Eldoret E & L Case No. 261 of 2013 in Joseph Kipkosgei Bitok Vs Julius Kipkessio Birir despite the fact that it was prudent for the applicants to make an application in E & L Case No. 261 of 2013 to be enjoined as parties and to set aside the proceedings.

The matters to be mentioned together for purposes of direction. Costs in the cause.

Dated and delivered at Eldoret this 4th day of October, 2018.

A.OMBWAYO

JUDGE