



REPUBLIC OF KENYA

IN THE ENVIROMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 149 OF 2019

(Formerly HCC 57 OF 2014)

GEOFFREY KIIRU KINYANJUL.....1ST PLAINTIFF

DAUD MOHAMED.....2ND PLAINTIFF

VERSUS

SAYID MOHAMED AMIN.....DEFENDANT

SAMUEL KIMOTHO WAWERU.....INTENDED INTERESTED PARTY

JONAH GOODWIN KARIUKI KANIU.....INTENDED INTERESTED PARTY

RULING

1. On 13th July 2018 Hon. Justice D O Ohungo made an order for the joinder of 7 interested parties to these proceedings as set out in the ruling/order. Thereafter there have been a multiplicity of applications for joinder of various parties as interested parties. The applications have apparently been provoked by the subdivision of land parcel number Naivasha/Maraigushu/Block 10/2 (Kedong), which is the subject matter of the suit, and issue thereof of subtitles to third parties.

2. In regard to the pending applications other than the Notice of Motion application dated 20th July 2020 by the defendant where the defendant seeks the enjoinder of Jefferson Mungai as an interested party, ostensibly on the ground that he unlawfully subdivided land parcel Naivasha/Maraigushu/block 10/2 (Kedong) and caused transfers thereof; and the Notice of Motion dated 17th November 2020 where Albert Otachi and Muriuki Karuiru interested parties seek to be added to the proceedings as the 3rd and 4th plaintiffs; all the other applications are by persons who hold subtitles resulting from the subdivision of land parcel Naivasha/Maraigushu Block 10/2 (Kedong) and are not opposed. Thus save for the application dated 20th July 2020 and the application dated 17th November 2020 which are the subject of this ruling all the other pending applications for joinder are deemed as allowed and the applicants enjoined as interested parties. At the conclusion of this ruling the court will give appropriate directions respecting their participation in the proceedings.

3. By the Notice of Motion dated 20th July 2020 the defendant inter alia sought to have Jefferson Mungai enjoined to the suit as an interested party and an order of injunction restraining the said Jefferson Mungai from alienating, selling, transferring and/or in any manner whatsoever dealing with any subdivisions arising from LR No. Naivasha/Maraigushu/Block 10/2 (Kedong). The Applicant inter alia grounded the application on the following grounds:

- i. That he was the lawful owner of land parcel Naivasha/Maraigushu Block 10/2 (Kedong) measuring 71.36 hectares or thereabouts;*
- ii. That the plaintiffs in 2007/2008 unlawfully transferred to themselves several plots resulting from the subdivisions of the said land;*
- iii. That Jefferson Mungai subdivided land parcel Naivasha/block 10/2 (Kedong) into plot No. Naivasha /Maraigushu/1103 and has taken possession of the same.*
- iv. That the subdivision was fraudulently carried out without the knowledge and/or consent of the defendant and the transfers thereof were illegal.*
- v. That Jefferson Mungai continues to encroach on the defendant's land parcel No. Naivasha/Maraigushu/Block 10/2 (Kedong).*

4. The applicant /defendant further swore an affidavit dated 20th July 2020 reiterating the grounds set out on the body of application.
5. In the Notice of Motion dated 17th November 2020 Albert Otachi and Muriuki Karuiru (interested parties) sought to be added as the 3rd and 4th plaintiffs respectively and the plaint to be amended appropriately to reflect the joinder. The application was primarily premised on the following grounds: -
- a. That the plaintiff sold to the applicants plot Nos 609,610 and 603 which were subdivisions of land parcel Naivasha/Maraigushu/block 10/2 (Kedong).*
- b That the plaintiff only issued to the applicants plot certificates and could not transfer owing to the defendant's failure to cooperate to facilitate the transfer.*
6. Albert Otachi swore an affidavit in support of the application where inter alia he deponed under paragraph 5 that it was wrong, unlawful and illegal for the defendant to deny having caused the subdivision of land parcel Naivasha/Maraigishu Block 10/2(Kedong). The applicants sought to be enjoined as plaintiffs and to be granted leave to file their claims.
7. Jefferson Mungai who it is sought by the defendant's application of 20th July 2020 to be enjoined as an interested party swore a replying affidavit dated 17th November 2020 in opposition to the application. He deponed that he was the registered owner of land parcel Naivasha /Maraigushu Block 2/1103 having purchased the same from the 1st plaintiff in 2013 procedurally. The proposed interested party denied that he had at any time in the course of the transaction dealt with 1st defendant. He averred that he fully paid for the purchase of LR No. Naivasha /Maraigishu Block 2/1103 to the 1st plaintiff who was the registered owner of the property and who in turn transferred the property to him (the proposed interested party). The interested party further deponed that the applicant's assertion that he was the one who subdivided land parcel LR No.Naivasha/Maraigishu Block10/2 was misleading as the defendant in his statement of defence and counterclaim had admitted that he had authorized the 1st and 2nd plaintiffs to undertake the subdivision.
- 8.The proposed interested party further averred that there was no basis for him to be enjoined in the proceedings as he no longer had any interest in land parcel LR Naivasha/Maraigishu block 2/1103 having sold and transferred the same to M/s Victoria Engineering Ltd. The proposed interested party further averred that he purchased and had the parcel of land transferred to him in 2012/2013 as attested by the abstract of title/green card and as at the time the defendant filed his defence and counterclaim the parcel of land was not part of land parcel Naivasha/Maraigishu block 10/2 (Kedong). The defendant did not apply for joinder of the interested party until July 2020.
9. By the Notice of Motion dated 17th November 2020 by Albert Otachi and Muriuki Karuiru claim they purchased plots from the plaintiffs but were only issued plot certificates in respect of the subplots they purchased . It is not clear why they wish to be joined as plaintiffs in the suit. Do they claim against the defendant and/or the plaintiffs who issued them the plot certificates? While they may have an interest in the suit property to the extent that they have not obtained titles to the plots they claim to have purchased, I do not consider they would have any role as plaintiffs in the suit. They are just interested parties and I grant them leave to participate in the suit as interested parties as at the conclusion of the trial, the court may very well make orders that may affect their interests. To contextualize their interest the said Albert Otachi and Muriuki Karuiru are granted leave to file any appropriate pleadings setting out their interest /claim for the record within 30 days from the date of this ruling.
10. Respecting the Notice of Motion dated 20th July 2020 where the defendant seeks to have Jefferson Mungai enjoined as an interested party in the proceedings, the court having reviewed the application, the affidavits in support and in opposition is not satisfied that the said Jefferson Mungai has any interest in the proceedings and/or is a necessary party in the proceedings. The land parcel Naivasha/Maraigishu/block 2/1103 that the defendant claims to have been a part of land parcel Naivasha /Maraigishu /block 10/2 (Kedong) is presently not registered in the name of Jefferson Mungai as the same was transferred to Victoria Engineering Co. Ltd as per the copy of title annexed to the supplementary affidavit dated 9th December 2020 by the said Jefferson Mungai. It would be an exercise in futility to enjoin Jefferson Mungai as an interested party to the suit yet he is not the registered proprietor of the subject parcel of land.
11. In the premises the prayer for joinder of Jefferson Mungai as an interested party is declined. Equally the prayer for injunction to the extent that it is directed against land parcel Naivasha /Maraigishu Block 2/1103 cannot be granted as the current registered proprietor is not a party to these proceedings.
- 12.Upon review of the facts and the evidence as set out in the pleadings there arises issues whether or not the plaintiffs had been appointed as agents by the defendant for the purposes of causing the subdivision of land parcel Naivasha /Maraigishu Block 10/2(Kedong) and selling subplots resulting therefrom. The many interested persons appear to have purchased subplots from the plaintiffs purportedly acting as the defendants duly authorized agents. Whether or not a valid principal/Agent relationship existed is an issue to be determined by the court at the trial. However, be it as it may be, numerous persons obtained titles to subplots arising from the transactions that were carried on by the plaintiffs either acting expressly in their individual capacities or as agents of the defendants. Some of these persons hold titles to the subplots that they purchased and to the extent that the court may at the conclusion of the case make orders that could affect the titles that they hold, the court has ordered that all such persons may be enjoined in the proceedings as interested parties and may participate in the proceedings.
- 13.To tidy the records, the court directs that the plaintiff does within a period of 30 days from the date of this ruling prepare a schedule of all the parties who have applied to be enjoined as interested parties and their applications have been allowed. The plaintiff to also indicate the subtitles claimed by each of the interested parties. To facilitate trial the plaintiff is also within 60 days from the date of this ruling directed to prepare and file a paginated trial bundle incorporating all the parties documents. The matter is fixed for trial directions on 30th September 2021. Each party to bear their own costs in regard to the applications.

14. Orders accordingly.

RUING DATED SIGNED AND DELIVERED AT NAKURU THIS 15TH JULY 2021.

J M MUTUNGI

JUDGE