



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC CASE NO. 27 OF 2016

PATRICK SIFUNA KINISU.....PLAINTIFF

VERSUS

PROTUS SIFUNA MAKOKHA.....1ST DEFENDANT

FRANCIS BARASA MAKOKHA.....2ND DEFENDANT

DAVID WANJALA MAKOKHA3RD DEFENDANT

LINDA MULAMA KAMANDE.....4TH DEFENDANT

AND

JOB MUNYASIA.....INTERESTED PARTY

RULING

When the plaintiff's Notice of Motion dated 15th July 2021 was placed before me on 19th July 2021, I certified it as urgent and directed that it be canvassed by way of written submissions. The plaintiff was to serve the application and submissions upon all the parties including **LINDA MULAMA KAMANDE** the proposed 4th defendant within 14 days. All the other parties would then have 14 days from the date of service to file their responses and submissions. The matter would then be mentioned before the Deputy Registrar on 23rd August 2021 to confirm compliance and take a date for ruling.

However, when the matter was mentioned before the Deputy Registrar on 23rd August 2021, the other parties including **LINDA MULAMA KAMANDE** the proposed 4th defendant, though served, had not filed any responses or submissions. A date for ruling was fixed for 12th October 2021 but I was un – well and in Nairobi for treatment.

The application seeks the following orders: -

1. Spent

2. Spent

3. That pending the hearing and determination of this suit, an inhibition order be issued inhibiting any dealing on the land parcels NO LR EAST BUKUSU/SOUTH KANDUYI/18401 and 18415.

4. That the plaintiff be granted leave to amend his amended complaint and enjoin LINDA MULAMA KAMANDE in this suit as the 4th defendant.

5. That costs be provided for.

The application is premised on the grounds set out therein and is also supported by the affidavit of **PATRICK SIFUNA KINISU** the plaintiff herein.

The gravamen of the application is that this suit involves the cancellation of the titles **NO EAST BUKUSU/SOUTH KANDUYI/18401** and **18415** registered in the name of **JOB MUNYASIA** named herein as an Interested Party. However, while this suit is still pending, the Interested Party has now transferred the land parcels **NO EAST BUKUSU/SOUTH KANDUYI/18401** and **18415** to **LINDA MULAMA KAMANDE** the proposed 4th defendant. It is therefore important that the said two parcels of land are inhibited and the plaint is further amended to enjoin **LINDA MULAMA KAMANDE** as a 4th defendant in this matter. Hence this application.

Annexed to the application is the Mutation Form showing the sub – division of the land parcel **NO EAST BUKUSU/SOUTH KANDUYI/1249** to create several parcels of land including the land parcel **NO EAST BUKUSU/SOUTH KANDUYI/18401** and **18415** as well as the Certificate of Official Search showing that the land parcels **NO EAST BUKUSU/SOUTH KANDUYI/18401** and **18415** have since 28th January 2021 been registered in the name of **LINDA MULAMA KAMANDE**.

The record shows that though served, neither **LINDA MULAMA KAMANDE** nor any of the other parties herein filed any responses or submissions in reply to the application. The plaintiff however filed his submissions as directed. The application is therefore not opposed.

I have considered the application which is un – opposed as well as the submissions by **MR WANYONYI** Counsel for the plaintiff.

The plaintiff seeks the following substantive orders: -

1. **Order of inhibition.**
2. **Leave to amend his amended plaint.**

INHIBITION: -

Section 68(1) of the **Land Registration Act** provides as follows: -

“The Court may make an order (hereinafter referred to as an inhibition) inhibiting for a particular time, or until the occurrence of a particular event, or generally until a further order, the registration of any dealing with any land, lease or change.”

Such an order is similar to an order of prohibitory injunction. It bars the registered proprietor of land in dispute from registering any dealings over the land until the dispute over ownership of the land is heard and determined or until further orders of the Court. Such an order is meant to preserve the property in dispute and therefore, the party seeking it must have good reasons to warrant such orders – **DORCAS MUTHONI & OTHERS .V. MICHAEL IRERI NGARI 2016 eKLR.**

From a perusal of the documents herein, it is clear that the original land parcel **NO EAST BUKUSU/SOUTH KANDUYI/976** was sub – divided to create, inter alia, land parcel **NO EAST BUKUSU/SOUTH KANDUYI/1249** which has since been sub – divided to give rise to the land parcels **NO EAST BUKUSU/ SOUTH KANDUYI/18401** to **18428**. This suit was first filed on 24th March 2016 and as recently as 28th January 2021 during the pendency of the suit, the parcels **NO EAST BUKUSU/SOUTH KANDUYI/18401** and **18415** were created and transferred to **LINDA MULAMA KAMANDE** the proposed 4th defendant herein. If an order of inhibition is not issued, the land may further be transferred to other third parties thus necessitating another application for inhibition and amendment of pleadings. That will result in further expenses to the parties and also the employment of more judicial time. These two resources are certainly not inexhaustible. It is therefore prudent that this Court grants the order of inhibition to forestall any such further applications. In doing so, this Court takes seriously the un – rebutted averment by the plaintiff in paragraph 9 of his supporting affidavit that the said **LINDA MULAMA KAMANDE** is planning to charge or sell to potential buyers the two land parcels **NO EAST BUKUSU/SOUTH KANDUYI/18401** and **18415**.

LEAVE TO AMEND THE AMENDED PLAINT: -

The record shows that the plaint herein has previously been amended to enjoin **JOB MUNYASIA** the Interested Party herein on 8th August 2020. This was after he was registered as the proprietor of the land parcels **NO EAST BUKUSU/ SOUTH KANDUYI/18401** and **18415** through a process that the plaintiff considers to have been fraudulent and corrupt.

Order 8 Rule 3(1) of the **Civil Procedure Rules** provides that: -

“Subject to Order 1 rule 9 and 10, Order 24 rules 3, 4, 5 and 6 and the following provisions of this rule, the Court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.”

It is generally accepted that amendments to pleadings should freely be allowed if they can be made without injustice to the other party and there is no injustice if the other party can be compensated with costs – **EASTERN BAKERY .V. CASTELINO 1958 E.A 461** and also **CENTRAL KENYA LTD .V. TRUST BANK LTD 2000 2 EA 365**. The Court has a wide discretion while considering such an application. The main consideration is to do justice to the parties and to avoid a multiplicity of suits.

The other parties as well as the proposed 4th defendant have not filed any response to this application. That is a clear indication that they do not see any prejudice being caused to them should the application be allowed.

Having said so, I notice from the record that plaintiff testified before **MUKUNYA J** on 28th November 2016 (almost five (5) years ago). Thereafter, the matter has been adjourned severally for one reason or another including the demise of Counsel (**MR AREBA**). I implore the parties and their Counsel to comply with all the directions herein so that this case can be heard and determined in the shortest time possible.

The up – shot of the above is that the plaintiff’s Notice of Motion dated 15th July 2021 is allowed in the following terms: -

- 1. LINDA MULAMA KAMANDE is enjoined in these proceedings as the 4th defendant.**
- 2. The further amended plaint be filed and served upon all the parties herein within seven (7) days from today.**
- 3. The said LINDA MULAMA KAMANDE shall file and serve her defence, witness statements and documents within 15 days from the date of service upon her of the further amended plaint.**
- 4. The other parties, if they so wish, shall be at liberty within seven (7) days from the date of service upon them of the further amended plaint to file and serve any amended defence.**
- 5. A pre – trial shall be held virtually before the Deputy Registrar on 22nd November 2021 and following the enjoinder of the 4th defendant in this matter, the trial shall commence denovo on a date to be fixed by the Deputy Registrar.**
- 6. Pending the hearing and determination of this suit, an order of inhibition is hereby issued inhibiting the registration of any dealing including a transfer or charge of the land parcels NO EAST BUKUSU/SOUTH KANDUYI/18401 and 18415.**
- 7. Costs shall be in the cause.**

Boaz N. Olao.

J U D G E

28th October 2021.

Ruling dated, signed and delivered at **BUNGOMA** this 28th day of October 2021 by way of electronic mail in keeping with the **COVID – 19** pandemic guidelines.

Boaz N. Olao.

J U D G E

28th October 2021.

This ruling was due on 12th October 2021. However, I was away in Nairobi for treatment. The delay is regretted.

Boaz N. Olao.

J U D G E

28th October 2021.