



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC NO. 501 OF 2017

(FORMERLY NAIROBI HCCC NO. 1138 OF 2015)

FRANCIS MBUGUA KAMAU

**JOHN KIOI KAMAU (Suing as the legal representatives of
the estate Of KAMAU NJOROGE - deceased)..PLAINTIFF**

VERSUS

SAIKIMBA OLE LEKISHAPUI.....DEFENDANT

RULING

This ruling is on the Notice of Motion dated 18th May, 2021. The said Motion seeks to restrain the first defendant either by himself or others from any of the following;

- a. Transferring the deceased's portion of the suit land measuring 9.6 acres known as LTK/KIMANA/TIKONDO/584 .
- b. Constructing on the suit land until the suit is heard and determined.
- c. Residing on the suit premises.
- d. Costs.

The application is supported by an affidavit sworn by the second Plaintiff John Kioi Kamau in which he narrates how his late father bought the suit land from the first defendant way back in 1974. The suit land namely LTK/KIMANA/TIKONDO/584 was partitioned from LR. 46. Later on, the partitioning was reversed and the land reverted to the first defendant who has now developed part of the said land and put up houses.

Annexed to the applicant's affidavit are four copies of agreements and acknowledgements of money received dated 1974 and 1975.

In addition to the above annexures, there are four pictures of buildings under construction and some maps. The application though served on the respondents is not opposed and no replying affidavit or grounds of opposition have been filed.

A perusal of the record shows that on 25/9/2017, a similar application was dismissed by the court. It is dated 10/11/2015 and just like the current application, it was brought under order 40 rules 1, 2 and 3 of the Civil Procedure Rules.

Having carefully considered the application in its entirety, I find that it has no merit for the following reasons;

Firstly, the motion is Res Judicata. Section 7 of the Civil Procedure Act provides as follows;

“ No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under which they are any of them claim, litigating under the same title, in a court competent to try such subsequent said or the suit in which such issue has been subsequently raised,

and has been heard and finally decided by such court”

I need not say more.

Secondly, there is no recent activity on the suit land going by the applicant’s affidavit which does not complain of any new development. Finally, I find that the only avenue available to the applicant was review of the order dated 25/9/2017 under Order 45 Rule 1 of the Civil Procedure Rules if the grounds enumerated therein exist.

I dismiss the application dated 18/5/2021 for the above reasons.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14TH DAY OF OCTOBER 2021

M.N. GICHERU

JUDGE