



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 214 OF 2016

ELIZABETH CEHPTANUI RONO (Suing as legal representative to

the estate of **ANDREW KIPNGENO RONO- DECEASED**)...**1ST PLAINTIFF**

SAMUEL KIPKEMOI TOO (Suing as a legal representative of

the estate of **ANDREW KIPNGENO- (DECEASED)**).....**2ND PLAINTIFF**

VERSUS

EDWARD KIPRONO RUTO.....**1ST RESPONDENT**

SALOMON YEGON**2ND RESPONDENT**

RULING

1. Judgment in the instant suit was delivered by Munyao, J on 13th June 2019. The Court held the plaintiff's title in respect of land parcel **Nakuru/Saino Settlement Scheme/64** to be the authentic title and ordered the parallel title for the same property held in the name of the 1st defendant, Edward Kiprono Ruto to be cancelled and for him to vacate from the suit land within 30 days. The 1st defendant filed a notice of appeal against the judgment dated 20th June 2019. By a Notice of Motion dated 12th July 2019 the 1st defendant opted to abandon and forego the appeal and instead sought an order for stay of eviction and prayed for four months to enable him to vacate from the land. On 25th July 2019 a consent order was made for the 1st defendant to vacate the land within three months of that date and the application was marked as settled.

2. On 25th September 2019 one Philip Rotich filed a Notice of Motion dated 20th September 2019 praying for orders that he be enjoined to the proceedings as an interested party as he was the owner of the suit land, and further prayed that the judgment, proceedings and all orders in the case be stayed and set aside and the applicant be granted an opportunity to file pleadings and be heard in the case a fresh.

3. In support of the application the applicant stated that he only came to learn of the suit from a neighbour during the month of July 2019; that he holds the original title documents for the land and that he has never sold or surrendered the same to anybody. He alleged the sale agreement and transfer documents presented in Court said to have been signed by him were forgeries. The applicant annexed a copy of the title deed registered in his name on 12th October 2005.

4. The plaintiff in response to the applicant's application filed both grounds of opposition and a replying affidavit on 11th October 2019. The plaintiff /respondent averred that the suit had been concluded and therefore the applicant's application for joinder had been overtaken by events. It was the plaintiff's assertion that it could not be true that the Applicant did not know about the case which has been ongoing since 2014. The plaintiff averred that the applicant's instant application was merely intended to frustrate the plaintiff by denying the plaintiff enjoyment of the fruits of her valid judgment. She asserted that the applicant was at liberty to bring a fresh action against her if he considered he had a valid cause of action.

5. The plaintiff/respondent filed written submission to canvass the applicant's application on 26th November 2019. The applicant stated he would entirely rely on the affidavit sworn in support of the application together with the affidavits in support opposition. I have reviewed and considered the application together with the affidavits in support and in opposition and I have also considered the submissions filed by the plaintiff in opposition to the application.

6. The Applicant was not a party to the suit though his name featured during the trial. The plaintiffs claimed the deceased Andrew Kipngeno

Rono purchased the suit land from the applicant in 2006 and had a title processed in the name of the deceased. The 1st defendant equally claimed to have been sold the land by the applicant and had a title processed in his name some time in 2012. Neither the plaintiffs nor the defendant called the applicant as a witness. The Court made the determination that the title in the name of the deceased was the valid title and directed that cancellation of the title in the 1st defendant's name and further ordered the 1st defendant to vacate from the land.

7. Out of nowhere the applicant has emerged claiming the land and denying ever selling the land to either the deceased or the 1st defendant. He alleges the titles they hold are forgeries as he still holds the original title.

8. The applicant does not claim to be in occupation or possession and it is intriguing where he had been since 2006 when apparently the land had been occupied by third parties. By the instant application he seeks to be enjoined in the suit as an interested party so that he can participate in the proceedings.

9. Order 1 Rule 10(2) of the Civil Procedure Rules provides for joinder of parties. It provides as follows: -

(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

10. My understanding of the above provision is that a party cannot be joined in proceedings that have been concluded. In the instant matter a judgment has been delivered, a decree has issued and technically the decree has been executed since the 1st defendant against whom judgment was entered abandoned his application for stay of execution and agreed to vacate the suit premises within 3 months of 25th July 2019. The Applicant's application has come too late in the day and is akin to seeking to close the stable after the horse had bolted.

11. The applicant's cause of action, if any, in my view is separate and distinct and perhaps could not have been conveniently tried in the present proceedings. The applicant, if he so desires should bring a fresh suit to ventilate his claims against either the plaintiffs or defendant jointly and /or severally as he may please.

12. There is no merit in the applicant's application and I order the same dismissed with costs to the plaintiffs.

13. Orders accordingly.

Judgment dated signed and delivered t Nakuru this 27th day of February 2020.

J M MUTUNGI

JUDGE