



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CASE NO. 43 OF 2019

KOIYAKI MARA LAND HOLDINGS.....PLAINTIFF

VERSUS

NABOISHO LAND HOLDING

COMPANY LIMITED AND OTHERS.....DEFENDANTS

RULING

By a Notice of Motion dated 23rd July, 2019 the Applicant sought for orders to vary and set aside the orders of the court that were issued on 19th July, 2019 and to further issue orders that tourists in the 1st and 2nd defendants conservancies do continue vesting and operating on the leased property that are leased to the 1st and 2nd defendants pending the hearing and determination of the suit herein.

The application was based on the grounds that the court did issue an ex parte order of injunction on 19/7/19 restraining the 1st and 2nd defendants from using parcels of land that were leased to the 1st and 2nd defendants which orders were obtained through concealment of material facts and falsehoods which caused the plaintiff members to assault, maim or even kill tourist in the 1st and 2nd defendants' conservancies.

The application was further based on the grounds that suit properties are leased to the 1st and 2nd defendant which are to expire on or before the year 2025 and that none of the registered owners of the properties has terminated the aforesaid leases and that the Plaintiff/Applicant don't have any right over the property that ranks higher than that of the 1st and 2nd defendant and that the unstamped and unregistered lease annexed to the application are in respect of those leased to the 1st and 2nd defendants.

The application was further supported by the affidavit of Daniel Ole Muli a director of the 2nd defendant in which he deponed that the majority of the suit property which are the subject of the orders of 19/7/19 are leased to the 1st and 2nd defendants which parcels are ordinarily used by the tourists for camp drives and book months in advance. He contended that the leases that the Plaintiffs held have been obtained by incitement and that there is no priority of contract between the plaintiff and the 1st and 2nd defendant.

The applicant further contended that the plaintiff/respondent do not have any legal interest in the suit land.

The application was opposed by the plaintiff by way of a replying affidavit of Denis Tipira Mako. The Plaintiffs have denied that they approached the court with unclean hands or have used the orders of the court to either harass, maim or injure tourists as alleged by the applicants.

The Plaintiffs contends that all previous leases were duly terminated and the plaintiff entered into new leases and acquired interest in the parcels of land and that despite the change they have conferred to allow ostensibly at a fee for the 1st and 2nd defendants clients to enjoy the game drives on the parcels of land.

I have considered the application before me and the oral submissions made. The application before me is one that seeks the court to vary and/or set aside the orders that were issued on 19/7/19. The grounds upon which an order of the court can be varied is now settled. A party must demonstrate that the said order was either obtained by fraud, misrepresentation of facts or concealment.

In the instant application the applicants allege that they have lease that are registered in their favour in respect of the parcels of the lands and further that the lease that the plaintiff/respondents have has not been registered nor stamp duty paid.

The respondents on their part state that they have taken possession of the parcels of land after the leases with the defendants were terminated.

Having stated the varying positions of the parties I find that the issues that the applicant is raising have no bearing on the orders that were issued by the court, I find that the plaintiffs/applicants did not engage any fraud or crucial material facts. The contest between the plaintiff and the defendants are issues focusing on the legitimacy of the lease that the land owners had entered into and this are issues that can be resolved at full hearing where evidence shall be taken and the authenticity of the lease of the termination thereof tested and for the above reasons I find that the notice of motion dated 23rd July, 2019 is not merited and I shall not disturb and/or vary the orders that I issued on the 23rd July, 2019.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at NAROK on this 5TH day of MARCH, 2020

Mohammed Kullow

Judge

5/3/2020

In the presence of:-

CA:Chuma/Kimiriny

Mr Meingati together with Chelanga for Plaintiff

Mr. Oyomba for the defendant

Mohammed Kullow

Judge

5/3/2020