



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC NO. 104 OF 2010**

**EZEKIEL KIRWA**

**MZEE ARAP KITUR (*on their own behalf and***

***on behalf of 13 Others*.....**PLAINTIFFS/APPLICANTS****

**VERSUS**

**MICHAEL KIPRUTO MISOI.....<sup>ST</sup> DEFENDANT/RESPONDENT**

**NIXON KIPSANG.....<sup>2ND</sup> DEFENDANT/RESPONDENT**

**JONATHAN SERONEI.....<sup>3RD</sup> DEFENDANT/RESPONDENT**

**JOSEA KAPTICH KIRWA.....<sup>4TH</sup> DEFENDANT/RESPONDENT**

**JOSEPH CHERUIYOT KUTUNY.....<sup>5TH</sup> DEFENDANT/RESPONDENT**

**NOAH K. BARNG'ETUNY.....<sup>6TH</sup> DEFENDANT/RESPONDENT**

**RULING**

1. By an application dated **13/11/2019** the plaintiffs sought a temporary inhibition restraining the County Land Registrar Trans Nzoia from releasing the title deeds and the registration of inhibitions against any dealings in those titles now known as **Kolongolo/Kolongolo Block 3 (Kapkoi West)/ 1 - 583 and** an amendment of the plaint to enjoin three more defendants to the suit.

2. It is stated in the grounds and deponed in the supporting affidavit annexed to the application that consent to subdivide the mother parcels to the said titles was issued in respect of **198** portions yet the defendants have manipulated the list of members to increase the portions to **583**. The defendants are said to have sold off huge chunks of the suit land to innocent citizens and are likely to continue doing so to the plaintiffs' detriment and injunctive orders are necessary; the defendants have urged the Ministry Of Lands to issue titles to the **583** parcels, and therefore the Attorney General and the County Land Registrar are relevant parties to these proceedings. It is stated that the proposed amendment will enable more details to be included in the case against the defendants.

3. The reply to the application contained in the replying affidavit of **Michael Kipruto Misoi** sworn on **4/12/2019** is that injunctive orders and the prohibition are sought against persons who are yet to be made parties to the suit; that **562** persons not parties to the suit would be affected by the said orders and thus be condemned unheard; that the proposed amendment would alter the character of the suit; by leaving out old prayers and including new causes of action yet the prayers proposed to be omitted were overtaken by events due to non prosecution of the suit over a long period; that a similar application was dismissed in **2015** and no appeal was lodged; and that farm members and the local administration approved the subdivision of the farm into **583** parcels and the increase was by virtue of sales and subdivision of the land.

4. The gravamen of the applicant's application is that the multiplication of the number of members from **198** to **583** was a scheme by the defendants to cover up for their illegal activities. It is thought by the plaintiffs that the proposed **7<sup>th</sup>** to **9<sup>th</sup>** defendants are necessary parties; the particulars of their alleged illegal activities are included in the proposed amendments.

5. It is not for this court to direct the plaintiffs as to who they should or should not enjoin to the suit. Once this court has established that there is some reasonable cause of action against them, or that their alleged actions are so closely associated with the cause of action against other defendants in the suit such that it is only logical to enjoin them, then they may be enjoined in that suit as defendants. In the instant case I have perused the proposed amended plaint and found that the additional statements warrant the joinder of the proposed **7<sup>th</sup>** to **9<sup>th</sup>** defendants and this court is inclined to order that they be so enjoined.

**6.** As for the orders of inhibition sought, there are good grounds for avoiding a detailed discussion of the merits of this case at an interlocutory stage. The subdivision has already been done. Numerous titles are bound to issue. The issuance thereof may lead to even more transactions over the suit land. Perchance the land is registered in the names of other persons and new transactions of various types registered over the land, the magnitude of complexity this suit will assume will mushroom into untold proportions.

**7.** I have not found any good grounds to reject orders of inhibition against the titles. Now that the 7<sup>th</sup>-9<sup>th</sup> proposed defendants have been found necessary they would implement such orders once granted so that the suit may be finalised first.

**8.** In this court's view the application dated **18/5/2015** was against the original six defendants only and it sought orders of injunction against the subdivision. The considerations upon which the application was granted were different from those that I have set out above. Besides, the court in that application noted that there were some irregularities noted by the Ministry of Lands concerning the subdivision scheme and the ruling was inconclusive as to whether those irregularities had been corrected. In any event it is not proper for this court to shut out the plaintiffs from ventilating their grievance simply because a great number of persons would be affected.

**9.** For the above reasons I find that the application dated **13/11/2019** is merited and I grant it in terms of prayers nos **4, 5** and **6** thereof. The costs of the application will be in the cause.

**10.** To supplement the above orders I hereby order that the amended plaint shall be filed and served upon all parties named within **14** days hereof.

**11.** This matter will be mentioned on the **23<sup>rd</sup> June 2020** for further directions.

**Dated, signed and delivered at NAIROBI via electronic mail on this 29<sup>th</sup> day of May, 2019.**

**MWANGI NJORGE**

**JUDGE ELC KITALE.**