



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE NUMBER 78 OF 2007

ANTHONY KIPKOSKE KIMETO.....PLAINTIFF

VERSUS

DICKSON A. RONO1ST DEFENDANT

DAVID A. RONO.....2ND DEFENDANT

VERONICA SIGIRO.....3RD DEFENDANT

PAUL CHEBUSIT.....4TH DEFENDANT

PAUL A. SUR A.....5TH DEFENDANT

PHILIP A. SIGILAL.....6TH DEFENDANT

DANIEL A. SIGILAL.....7TH DEFENDANT

DAVID A. SIGILAL.....8TH DEFENDANT

BENJAMIN A. SIGILAL.....9TH DEFENDANT

MRS.OBOT NORA SERON.....10TH DEFENDANT

KIPTANGUS A. BUSIENEL.....11TH DEFENDANT

SAMUEL A. TOWET.....12TH DEFENDANT

WISON A. TOWET.....13TH DEFENDANT

ROBERT KIPROTICH.....14TH DEFENDANT

THOMAS MAIWA.....15TH DEFENDANT

RULING

1. This case was filed on the 16th April 2007. The defendants filed their respective defences in June 2007 and upon complying with pretrial requirements, hearing of the plaintiff's case commenced before the

Honourable Justice Maraga (as he then was) and finalised on the 13th May 2009. The case was consolidated with **HCCC No. 97 of 2008** by order of the court dated the 17th September 2009.

2. On the 16th July 2015, when this court took over the hearing, the court was told by the plaintiffs advocates that P defendants No. 4 and 5 entered no appearance nor filed their defences while Defendants No.1 and 2 entered into a consent and removed themselves from the case. The defendants left in the case are therefore Numbers 3, 6, 7,8 ,9 and 10.

PW2 and PW3 testified and closed their case on the 16th July 2015.

3. The court with consent of parties gave numerous defence hearing dates but for one reason or the other, the defence evidence is yet to be taken. When the suit came up for hearing of the defence case on the 11th April 2017, the court was informed that the defendants have filed an application that ought to be heard before the defence case can commence.

4. The application is dated the 11th April 2017. A hearing date for the application was taken for the 25th April 2017. Parties urged the court to determine the application on the affidavit evidence as filed by the applicants and the replying affidavit filed by the respondent.

5. The Notice of Motion dated 11th April 2017 is filed by the Defendants under the provisions of **Sections 1A, 1B, 3A and 63 of the Civil Procedure Act** and **Order 1 Rule 10, Order 51 Rule 1 of the Civil Procedure Rules**. They seek orders that:

(i) David Lamalampa Ole Yaile, the Administrator of the Estate of Indeyo Ole Yaile (deceased) herein be enjoined as a necessary party in the matter.

(ii) There be a stay of further proceedings herein hearing and determination of the application.

(iii) This Honourable court be pleased to make such other or further orders that it may deem fit and just to grant.

(iv) That costs of the application be in the cause.

6. The grounds upon which the application is grounded are that the applicants are purchasers for value of distinct and separate portions of land within parcel of land known as **NAROK/CIS-MARA/ILMOTIOK/2444** which was curved out of land parcel known as **NAROK CIS-MARA/ILMOTIOK/378** previously registered in the names of Indeyo Ole Yaile deceased.

7. That the defendants (3, 6, 7, 8, 9 and 10) are each in occupation where they have substantial developments with the consent of the family of Indeyo Ole Yaile (deceased) and they seek to enjoin **David Lamalampa Ole Yaile** the administrator of the estate, who remains the registered proprietor of all the land known as **NAROK/CIS-MARA/ILMOTIOK/2444** as a necessary party in the proceedings.

8. It is alleged that the intended party's claim as the proprietor of the parcel of **Land 2444** purporting that it is the same and as his land parcel known as **NAROK/CIS-MARA/ILMOTIOK/468** is fraudulent and unlawful.

The applicants state that the said David Lamalampa if enjoined will clarify the family's position in respect of their land parcel registered in the late Indeyo Ole Yaile deceased's name. The 3rd defendant has sworn the supporting affidavit.

9. The application is opposed and a Replying Affidavit to that effect was sworn on the 11th April 2017 and filed on the 12th April 2017 by the plaintiff.

He depones that the subject suit property in this suit is **Parcel No. NAROK/CIS-MARA/ILMOTIOK/378** and not **NAROK/CIS-MARA/ILMOTIOK/2444** or **468** that the plaintiffs lay claim on.

10. That as the land parcels are different, the proposed party for enjoinder to the proceedings has no interest in the suit land. It is further deponed that the suit land had never been sub-divided and has annexed as exhibit the suit property Greencard and marked "**AKKI.**"

He depones that this application is yet another attempt to delay the conclusion of the case.

11. I have considered the affidavit evidence by both parties.

The suit property as stated in the plaint dated the 13th April 2007 is **NAROK/CIS-MARA/ILMOTIOK 468** measuring approximately 44.0 Hectares. I have seen the Greencard and a search certificate over this land parcel. It is registered in the names of Antony Kipkoske Kimeto.

The Green card shows that he was so registered on the 16th December 1988 and a Title issued on the same day.

12. The Greencard further shows that the 1st registered owner was Patrick Seki on the 11th September 1980 and several Charges were registered against the title on various dates the latest being on the 13th May 1993 to National Bank of Kenya to secure a sum of Kshs.1,980,000/=. The official search conducted on the 6th October 2008 confirms the Charge to National Bank of Kenya which is yet to be discharged as the record shows.

13. The suit property, the applicants and defendants claim to have been owned by the deceased is **NAROK/CIS-MARA/ILMOTIOK/2444**. It is not the same as the plaintiff's suit property. They have not provided the court with the title document or the Greencard or even a search certificate to confirm ownership or even subdivision from any other land parcel. They have not demonstrated any interest on Land Parcel **NAROK/CIS-MARA/ ILMOTIOK/468**, the suit property. I find no relevance or similarity of these two land parcels to the suit property.

I agree with the plaintiff's averments that this application is but a further tactic to delay the finalization of the suit that has been in court for 20 years. Litigation has to come to an end.

14. In the premises, I find no merit in the application dated 11th April 2017. It is dismissed with costs.

Dated, Signed and Delivered this 8th Day May of 2017.

J.N. MULWA

JUDGE