



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 500 OF 2017

SAIPEI NAREIYO LEMAYIAN.....1ST PLAINTIFF

NENGOE ENE MAINGUSI.....2ND PLAINTIFF

ANDREW AHO.....3RD PLAINTIFF

VERSUS

LAND REGISTRAR (KILGORIS).....1ST DEFENDANT

OLOIRIEN GROUP RANCH.....2ND DEFENDANT

RULING

By a Notice of Motion dated 1st October, 2019 the Applicant sought for leave to allow the 3rd to the 10th proposed defendants to be enjoined in the suit herein, that the Plaintiff/Applicant be granted leave to amend their plaint so as to include the intended defendants and lastly that the intended defendants be allowed to file their defence accordingly. The Application was based on the grounds that the inclusion of the intended defendants will be necessary for the determination of the suit as they have begun the process of issuing title deeds in respect of the suit land. the Application was supported by the affidavit of the 3rd defendant in which he averred to the contents on the ground upon which the application is based.

The Application was opposed by the 2nd respondent in which it averred that the proposed amendments are premised on conjectures and supposition and hence meant to delay the expeditious disposal of the suit herein. The 2nd respondent further averred that the issue on the boundaries of the suit land Trans Mara/Oloirien/24 have since been determined and resolved and further that the Plaintiff/applicant have not demonstrated by way of searches the parcels allocated to the intended defendants and that the entire application is based on rumours.

The 4th to the 10th intended defendants have also filed a replying affidavit in opposition to the application and contend that the application is made in bad faith and the same is devoid of material facts. They stated that they have their own independent parcels of land and have titles to the same and thus the application is only meant to drag them into unnecessary litigation and they have always remained with the confine of their own parcels.

I have considered the application before me and the submissions filed by the parties and the issue for determination before the court is whether it is necessary to enjoin the 3rd to the 10th intended defendants to the suit herein.

The power to enjoin a party to the suit is set out under the provisions of order 1 Rule 10 (2) of the Civil Procedure Rules provides:

“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.”

The Plaintiff/Applicants contend that the inclusion of the Defendants will assist the court in determining the issue between the parties. However, the 2nd defendant and the intended defendants oppose the same as they insist their parcels of land does not form part of land parcel Trans Mara/Oloirien/24 and they have annexed to that replying affidavit copies of their own titles.

From the applicants’ submission and pleadings I have not seen reasons of either fraud or misrepresentation attributable to the intended defendants in the acquisition of their respective parcels of land nor how any decision that will be made by the court will affect the parcels of

land owned by the intended defendant and for the above reasons I am satisfied that the inclusion of the intended defendants will not in any manner assist the court in the determination of the issue between the applicants and the intended defendants and I thus find that the notice of motion dated 1st October, 2019 lacks merit and I dismiss the same with costs.

DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 11th day of June, 2020.

Mohammed Kullow

Judge

11/6/2020

In the presence of:

CA:Chuma

Parties and advocates absent