



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 67 OF 2010**

**KIPLANGAT ARAP SOI & 246 OTHERS.....  
.....PLAINTIFFS  
VERSUS**

**ANGATA BARIGOI FARMERS CO-OP SOCIETY.....1<sup>ST</sup>  
DEFENDANT**

**JOSEPH MEIPUKO TORONKEI.....2<sup>ND</sup>  
DEFENDANT**

**DISTRICT LAND ADJUDICATION  
OFFICER,  
TRANSMARA.....3<sup>RD</sup>  
DEFENDANT**

**DIRECTOR OF LAND ADJUDICATION.....4<sup>TH</sup>  
DEFENDANT**

**DISTRICT LAND REGISTRAR TRANSMARA.....5<sup>TH</sup>  
DEFENDANT**

**CHIEF LAND REGISTRAR.....6<sup>TH</sup>  
DEFENDANT**

**THE ATTORNEY GENERAL.....7<sup>TH</sup>  
DEFENDANT**

**RULING**

The Chamber Summons dated 29/7/2010 is brought by 429 people who seek to be joined to this suit as defendants. They also pray that Jonathan Kiplangat Bor be allowed to act for the proposed defendants. The applicants claim to be in actual possession of the suit land and therefore the decision that may be made in this case will have a direct bearing on their property; that the applicants are neighbors to the plaintiffs and members of Angata Barigo Adjudication area; that Moyoi Adjudication Section was illegally extended into Angata Baragoi section which was beyond the adjudication boundary and completely different adjudication committee; that the committee acted negligently and in error; that the process was fraudulent and corrupt and as a result the applicants were not recognized and were denied registration and have suffered injustice; that the applicants have lived in the Angata Adjudication Section for very long upto the 3<sup>rd</sup> to 4<sup>th</sup> generations and the adjudication process has dispossessed them. They

request for an open and transparent and fair adjudication process; that the applicants' rights to own property have been violated; that this court can only be able to fully adjudicate on the issues herein with the participation of the applicants in the proceedings.

In opposing the application, Kiplangat Arap Soy, on behalf of the plaintiff/respondents deponed that this application is an abuse of the court process; that the applicants have come to court for reasons of negligent and reckless adjudication of Moyoi Adjudication section by its demarcation committee into the Angata Baragoi section, however, in the supporting affidavit, they allege different reasons of violation of property rights, rights to possess and entire adjudication process holding illegal titles; that the facts recorded give rise to separate independent reliefs and the application amounts to a misjoinder of causes of action. The plaintiffs/respondents claim to be the bona fide title holders; that the Angata Baragoi Adjudication process began in 1986 and it was finalized and if there were any complaints or objections, the same ought to have been raised and addressed at the Committee Adjudication Arbitration Board, objections and appeal to the Minister; that if the applicants have any claims they should file independent suits; that the applicants failed to annex the defence or counterclaim to demonstrate the suitability of their claims. It is also the respondents' contention that they doubt the authenticity of Bor's authority to represent all the applicants herein because some of the applicants are already plaintiffs in these proceedings, while some of the applicants were minors at the time of adjudication. The respondent annexed a list of 30 people who were already in the proceedings as plaintiffs. (KSA1) and another is the list of those who were minors at the time of adjudication (KSA2). It was urged that the applicants do not indicate whom they want to claim against.

I have now considered the rival arguments and what I can glean from the affidavits is that both the plaintiffs and defendants are residents of the same area, that is Angata Baragoi Adjudication Area. Both of them claim to be aggrieved by the adjudication of Moyoi Adjudication Sections by its Demarcation Committee into Angata Baragoi Sections. However, they part ways when the defendants allege that the adjudication resulted in the issuance of illegal titles to the plaintiffs yet the land belongs to them (defendants). It is also the defendants' complaint that the plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> respondents were wrongfully registered as proprietors of the suit land even though some of the titles have since been revoked. To the contrary the plaintiffs contend that the titles issued to the plaintiffs and 2<sup>nd</sup> defendant were properly issued and should not be revoked. It therefore means that the plaintiffs and defendants are claiming the same piece of land.

I have seen the defence filed by the 3<sup>rd</sup> to 7<sup>th</sup> defendants. It sets out what has transpired in the matter, that all interested parties were given 60 days notice to lodge an objection with the District Lands Adjudication Officer, Transmara, but when none was forthcoming, the adjudication register was made final and certificates of ownership were issued to members of the 1<sup>st</sup> defendant, who must include members of the 1<sup>st</sup> defendant. That was in accordance with Sections 25 and 27 of the Land Adjudication Act. Thereafter the plaintiffs alleged that there was a boundary dispute and that on 5/8/03, the 5<sup>th</sup> defendant learned of there being titles that were issued fraudulently overlapping title Transmara Moyoi/2 registered in the 1<sup>st</sup> defendant's name. The titles were revoked after the 5<sup>th</sup> defendant was informed of the fraud and thereafter the plaintiffs filed HCC 992/03 and obtained stay orders but on the hearing date, when they withdrew the suit and filed this suit. The defendants claim that this suit amounts to abuse of the court process. That is however, for the hearing of the main suit.

The applicants/defendants have not disclosed to the court the exact piece of land they claim to be theirs. Besides they did not exhibit a draft defence/counterclaim to demonstrate against whom they claim and whether they have a genuine claim. It would be a waste of the court's precious time and resources to allow this application only for it to turn out that the 429 applicants had no claim in the matter at all. I find the application to be vague and as presented, this application is incompetent and it is hereby struck out with the applicants' bearing the costs.

It was the respondents' contention that some of the people named as applicants are actually plaintiffs. Mr. Kurgat, the respondents' counsel, specifically referred to Joseph Kugo Sigilai, plaintiff No.337 who is listed as the 5<sup>th</sup> applicant. I have compared (KSIA) with the proposed defendant's list and I do find that

apart from Joseph Kugo Sigilai who appears in both lists, David Koech, Samuel Cheramwok Tuei, Samuel Cheruiyot and Christopher Kipsigei Koech are listed as plaintiffs and yet they are also applicants who seek to be joined as defendants. That means that Bor does not have specific authority from all the applicants. Each applicant should have filed their own authority. The discovery that some of the proposed defendants are actually plaintiffs, raises doubt as to the genuineness of the application. The plaintiffs also alleged that some of the applicants were minors at the time of adjudication. A list was exhibited (KSIB). The applicants did not dispute the list. For all the above stated reasons the applicants have not satisfied this court as to why they should be joined to this suit as defendants and the said application is dismissed with costs.

**DATED and DELIVERED this 2<sup>nd</sup> day of March, 2012.**

**R.P.V. WENDOH**  
**JUDGE**

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**PRESENT:**

Mr. Rugut holding brief for Kurgat for the plaintiffs.

Mr. Chelule for the defendants.  
Kennedy – Court Clerk.