



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 941 OF 2012

DEVSHI KARSAN VARSAN.....1ST PLAINTIFF

SELINA CHEPKOECH KANDA.....2ND PLAINTIFF

VERSUS

ELISHA BUSIENEL.....1ST DEFENDANT

TITO KIBIWOT YAGAN.....2ND DEFENDANT

OBADIAH SAINA.....3RD DEFENDANT

JONAH MAIYO.....4TH DEFENDANT

HOSEA RUTO.....5TH DEFENDANT

ROSE JEPKOSGEI KIGEN.....6TH DEFENDANT

GILBERT KIPKOSGEI SAINA.....7TH DEFENDANT

PERIS CHERUTO.....8TH DEFENDANT

LYDIA CHERUIYOT KENDAGOR.....9TH DEFENDANT

CHIEF LAND REGISTRAR,

UASIN GISHU COUNTY.....10TH DEFENDANT

NATIONAL LAND COMMISSION.....11TH DEFENDANT

DITMAN CONSTRUCTION CO. LTD.....12TH DEFENDANT

SUGAR LAND ESTATES.....13TH DEFENDANT

PHARMACY AND POISONS BOARD.....14TH DEFENDANT

FARUK KIBET TAIGUT.....15TH DEFENDANT

YEGAN FARM LIMITED.....16TH DEFENDANT

ANNA CHEROP CHEPSIROR.....17TH DEFENDANT

CAROLINE WANJIRU MUYA.....18TH DEFENDANT

HOSEA KILI.....19TH DEFENDANT
SAMWEL RUTO.....20TH DEFENDANT
DAVID KIPKOECH RUTO.....21ST DEFENDANT
DILIP KUMAR KANJI SHAH.....22ND DEFENDANT
PRAXIDES NASIMIYU WASIKE.....23RD DEFENDANT
VIPUL RATLAL DODHIA.....24TH DEFENDANT
DIPAKEN VIPUL.....25TH DEFENDANT
KENYA COMMERCIAL BANK (KCB) LTD.....26TH DEFENDANT

AND

MANMOHAN DOGRA SINGH.....1ST INTERESTED PARTY/APPLICANT
PARMINDER SINGH DOGRA.....2ND INTERESTED PARTY/APPLICANT
DR. KAWALDEEP KAUR DOGRA..3RD INTERESTED PARTY/APPLICANT
KULDIP KAUR DOGRA.....4TH INTERESTED PARTY/APPLICANT

RULING

The interested parties herein **Manmohan Dogra Singh, Parminder Singh Dogra, Dr. Kawaldeep Kaur Dogra** and **Kuldip Kaur Dogra** have come to court seeking that they be struck off court record as interested parties and in place leave be granted to them to be enjoined as co-defendants. The interested parties apply that their pleadings as interested parties be struck out and in place the draft statement of defence be deemed as properly filed and served upon all parties.

They pray further that the 1st, 2nd, 3rd and 4th interested parties' list of documents, list of witnesses and witness statements dated 11.2.2019 and filed on 12.2.2019 be deemed as properly filed. The cost of the application be in the cause.

The application is based on grounds that the Interested Parties/Applicants had earlier been allowed by an order of this Honourable Court to be enjoined as Interested Parties and that based on the evidence and facts on record, it will be prudent and in the best interest of justice to allow the 1st, 2nd 3rd and 4th Interested Parties be struck off the court record and in place be enjoined as Co-Defendants as the Proposed Defendants.

It is contended that the Proposed Defendants have always and continue to have a claim over the suit property in question Eldoret Municipality Block 8/51.

That with inclusion and/or entry of the Eldoret Bakery Limited as the 27th Defendant, it will be prudent and in the best interest of justice to have the Interested Parties herein be included and/or enjoined as Co-Defendants in this matter so as to shed more light and/or information concerning the allegations by the 27th Defendant that they had sold and transferred the suit property to them on the 12th September, 1985.

The proposed Defendants maintain that they have an absolute ownership and indefeasible title on the suit property in Question Eldoret Municipality Block 8/51 which both the Plaintiffs and the Defendants claim the same rights over it.

That it will be only fair and in the best interest of justice for their cross- claim be dealt with once and for all as justice has been elusive to them for over twenty-eight (28) years.

That the Proposed Defendants being the rightful original owners on the suit property are seeking to be enjoined in this suit claiming first preemptive ownership rights of the all the parcel of land known as ELDORET MUNICIPALITY BLOCK 8/51 as opposed to the Plaintiff and the Defendants.

That the cross-claim by the Proposed Defendants is against the 2nd Plaintiff, the 1st, 3rd, 10th and 11th Defendants on record who had illegally, unlawfully, unprocedurally and fraudulently registered themselves and their proxy company ELDORET BAKERY LIMITED as the owners of the suit property in question ELDORET MUNICIPALITY BLOCK 8/5 knowing very well the said suit land belongs to the Proposed Defendants. It is further contended that both the Plaintiffs and the Defendants have not come to this Honourable Court with clean hands and as such they do not deserve the orders they are seeking.

That the Proposed Defendants' interest in the suit land resulted pursuant to the lease period of 99 years starting from 1st August, 1910 which was to end on the 1st August, 2009 and as such, it will be only fair and in the best interest of justice to allow them to be enjoined as Co-defendants to put the record straight so as to assist this Honourable Court reach an amicable settlement for all the parties involved.

The applicants state that due to the manner of exchange and nature of the pleadings on record, the Proposed Defendants need to be enjoined as Co-Defendants to the suit in order to defend their rights as the rightful owners of the suit property which is embattled at their expense. That it is in the best interest of justice that the Proposed Defendants be enjoined in this suit to enable the court effectually, fairly and completely adjudicate upon and settle the suit once and for all.

The draft statement of defence and cross-claim by the Proposed Defendants raises weighty issues ought to be canvassed by all the parties in here which will eventually enable this Honourable Court to come a just and/or amicable determination over the suit property Eldoret Municipality Block 8/51.

According to the applicant, no party will suffer any prejudice if the prayers sought herein are granted as prayed as it is only meant to assist this Honourable Court to come to a just conclusion pertaining the suit land in question.

The statements on record by one Elisha Busienei and Obadiah Saina dated 12th February, 2019 have adversely mentioned that their purported company Eldoret Bakery Company Limited was sold the suit property in question Eldoret Municipality Block 8/51 by Tara Singh Dogra, Manmohan Dogra Singh, Parminder Singh Dogra and Rajinder Singh Dogra and thus the reason why the said application ought to be allowed so as to enable the court to know the truth.

That they pray that this Honourable Court upholds the principle of; "***not only must Justice be done; it must also be seen to be done***".

That this Honourable Court has the powers to entertain this present application basing on the evidence, facts and/or statements on record by all the parties as they alleged that the Dogras had sold the suit property to the Eldoret Bakery Limited who later sold to various Defendants in here and as such by allowing the application as prayed will assist justice not to be defeated for the rightful and legal owner. That the instant application has been brought timely and in good faith.

The 1st to 9th defendants filed grounds of opposition stating there are already court orders allowing the interested parties on record. The same were obtained by consent and can only be set aside by consent. There is no application to review the consent, there is no appeal and that there is no consent to review the consent. According to the respondents, one cannot be struck and brought back in a different manner. The respondents argue that the relevant provision is order 1 rule 15 otherwise parties will be forced to play a game without rules.

The interested parties have been adversely mentioned by parties herein and therefore ought to be enjoined as proper parties recognized by the civil procedure Rules. The National Land Commission has a counterclaim against the interested parties. The import of the aforesaid provisions of the Civil Procedure Rules is that parties can only properly litigate as plaintiffs, defendants and 3RD Parties.

I have considered the application by the interested parties and grounds of opposition and do find that the interested parties were brought into the matter by consent of the parties, the consent has not been set aside. I have perused the record and do find that the National Land Commission was enjoined on this matter on the 2.3.2014. The interested parties were allowed to file their papers on 30.3.2017 as at the time the interested parties were filing their defence and documents the National Land Commission had not filed its defence and counterclaim which seeks the court to find that the property reverts to the state and therefore, the plaintiffs, defendants and interested parties are set to lose what they consider as their right to the property. In the counterclaim or cross claim filed by the National land commission the interested party is deemed as the defendant.

I do find that it is prudent that the interested parties file their defense against the counter claim by the National Land Commission. In this dispute, the interested party interest will not be properly litigated as interested party due to the fact that they are claiming residual interest whilst the national land commission is claiming reversionary interest.

I do agree with the interested parties and do grant them orders that the interested parties' pleadings as interested parties be and are hereby struck out and in place the draft statement of defense is hereby deemed as properly filed and served upon all parties. The interested parties to pay the prerequisite fee. The 1st, 2nd, 3rd and 4th interested parties' list of documents, list of witnesses and witness statements dated 11.2.2019 and filed on 12.2.2019 is hereby deemed as properly filed. The cost of the application be in the cause.

Due to the said orders, the plaintiff is allowed to further amend the plaint forthwith to indicate the interested parties as defendants No. 29 and 30.

Dated and delivered at Eldoret this 8th day of March, 2019.

A. OMBWAYO

JUDGE