



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 472 OF 2016

DIANA LEE LASOI (SUED AS ADMINISTRATOR OF THE ESTATE OF

SOLOMON KIPKORIR ARAP LASOI..... 1ST PLAINTIFF

LEAH CHERONO SHABANGI2ND PLAINTIFF

VERSUS

JOHN KIPTOO CHERUIYOT 1ST DEFENDANT

PETER K. CHERUIYOT.....2ND DEFENDANT

COLLINS K. CHEPKWONY..... 3RD DEFENDANT

JANE CHEPKORIR BARBARET..... 4TH DEFENDANT

CAREN CHEPKURUI MUTAI.....5TH DEFENDANT

CAROLINE CHEBET..... 6TH DEFENDANT

SAMWEL KIPNGETICH KITUR BETT..... 7TH DEFENDANT

THE COUNTY LANDS REGISTRAR

NAKURU COUNTY..... 8TH DEFENDANT

RULING

1. This ruling is in respect of two applications: plaintiffs' Notice of Motion dated 15th October 2018 and 2nd to 7th defendants' Notice of Motion dated 1st November 2018.

2. Notice of Motion dated 15th October 2018 seeks transfer of CM ELC No. 106 of 2018 (Nakuru) Caroline Chebet v Diana Lee Lasoi & 2 Others from Chief Magistrate's Court at Nakuru to this court, setting aside of orders dated 25th May 2018 issued by the Chief Magistrate's Court in the said case and striking out of the said case. The application is supported by an affidavit sworn by the 2nd plaintiff. The plaintiffs contend that the said case is sub judice and res judicata in view of this case, that the order issued on 25th May 2018 is contrary to this court's orders made on 8th November 2016, 11th June 2018 and 13th September 2018. Copies of pleadings in the said case are annexed.

3. On the other hand, Notice of Motion dated 1st November 2018 seeks transfer of this suit to the Chief Magistrate's Court Nakuru for hearing and determination and its "merger" with CM ELC No. 106 of 2018 (Nakuru). The application is supported by an affidavit sworn by the 2nd defendant. The applicants contend that the value of the subject parcel of land known as Nakuru/Olenguruone/Cheptuech/269 is within the pecuniary jurisdiction of the subordinate court and that the said property is located within the local limits of the jurisdiction of the said court. The plaintiffs opposed the application through a replying affidavit sworn by the 2nd plaintiff. She deposed that the suit property is valued at KShs 20,000,000 and annexed a valuation report to that effect.

4. The applications were canvassed by written submissions. Both sides filed and exchanged submissions. I have carefully considered the applications, the affidavits filed and the submissions.

5. A perusal of the record herein reveals that this suit (ELC No. 472 of 2016) was filed on 7th November 2016. The dispute revolves around the parcel of land known as Nakuru/Olenguruone/Cheptuech/269. On 8th November 2016 this court granted an injunction restraining the defendants from advertising or selling the said property on an interim basis. The orders were confirmed on 19th June 2018 after inter parte hearing of the application. On 7th June 2018, the plaint herein was amended to join the 4th to 8th defendants.

6. There is no dispute that CM ELC No. 106 of 2018 (Nakuru) was filed on 25th May 2018 by the 6th defendant herein and that the said case also concerns Nakuru/Olenguruone/Cheptuech/269. On the same date, the subordinate court granted an injunction restraining the plaintiffs herein from among others entering into, dealing with, or interfering with Nakuru/Olenguruone/Cheptuech/269. As at that date, the 6th defendant was yet to be joined to this case. I would therefore not say that the 6th defendant filed the said case while aware of the existence of this case or that the said case is sub judice and res judicata. Nevertheless, it is abundantly clear that the orders of the subordinate court are in direct contradiction of this court's orders of 8th November 2016 which were confirmed on 19th June 2018. To resolve the confusion, I will order transfer of CM ELC No. 106 of 2018 (Nakuru) to this court and set aside of orders made therein on 25th May 2018. I also take into account that the value of Nakuru/Olenguruone/Cheptuech/269 may already be or may in the near future be beyond the pecuniary jurisdiction of the subordinate court.

7. I therefore make the following orders:

- a) CM ELC No. 106 of 2018 (Nakuru) Caroline Chebet v Diana Lee Lasoi & 2 Others is hereby withdrawn from Chief Magistrate's Court at Nakuru and transferred to this court.
- b) The orders made on 25th May 2018 in CM ELC No. 106 of 2018 (Nakuru) Caroline Chebet v Diana Lee Lasoi & 2 Others are hereby set aside.
- c) Upon transfer to this court and being allocated a case number of this court, CM ELC No. 106 of 2018 (Nakuru) Caroline Chebet v Diana Lee Lasoi & 2 Others shall be consolidated with this case (ELC No. 472 of 2016). The lead file shall be ELC No. 472 of 2016.
- d) Costs of Notice of Motion dated 15th October 2018 and Notice of Motion dated 1st November 2018 shall be in the cause.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 26th day of June 2019.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Kawira holding brief for Mr Chelule for plaintiffs

No appearance for 1st defendant

Mr Karanja Mbugua for 2nd to 7th defendants

No appearance for 8th defendant

Court Assistants: Beatrice & Lotkomoi