



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC(JR) MISC.APPLICATION NO.7 OF 2019

REPUBLIC.....APPLICANT

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE CHIEF LANDS REGISTRAR.....2ND RESPONDENT

AND

KIBIRGEN KIMAIYO.....1ST INTERESTED PARTY

ABDI SITIENEL.....2ND INTERESTED PARTY

ELIAS BUSIENEL.....3RD INTERESTED PARTY

KIPSANG MASAI.....4TH INTERESTED PARTY

JOHN KISUGUT TOO.....5TH INTERESTED PARTY

SYLVESTER ARAP CHOGE.....6TH INTERESTED PARTY

PHILIP SAWE TANUL.....7TH INTERESTED PARTY

AND

HON. JUSTICE (RTD) PHILIP KIPTOO TUNOI.....EX-PARTE APPLICANT

RULING

This ruling is in respect of an application brought by way of Notice of Motion dated 22nd May 2019 seeking the following orders:

a) Enjoining Thomas Rugut, Julius Tirop and Nyairo and Company, Advocates as parties in this applications for the purpose of production of information /evidence which will assist this honourable court for just determination.

(c) Inspection of Court file (High Court Civil case No, 34 of 1983) and determine who drew and filed it as a matter of upholding principle of Environment and Land Court Act,

(d) Order for production of four types of agreements by 1st Responder (Ex-parte Applicant for scrutiny as they are invalid, forged hence ought to be expunged by this honourable court namely:

- Amended agreement as per his letter dated 10/4/2006

- Agreement between Kaptuktuk Farm limited Company (Plaintiff in file), vendor(G.V.Patel and five others) and 1st Respondent/Ex-parte Applicant. With purported consideration of Kshs (see supplementary affidavit dated 2nd may, 1983 paragraph 6th, 7th and 11th of the High Court Civil Case No. 34 of 1983 case file).

- Agreement of sale dated 9th November, 1974 between vendor (G.V Patel and five others) and 1st Respondent /Ex-parte applicant. With purported consideration of Kshs. 201,600/= for the five hundred and seventy six acres of land (parcel L.R 84089/1) (see affidavit sworn by the 1st respondent/ex-parte applicant on High Court Civil case No. 34 of 1983 34rd ,4th ,6th and 8th paragraph of the affidavit).
- Supplementary agreement dated 28th April, 1975 between Directors who benefited from unfair land subdivision in the year 1992 and one of the six vendors and 1st Respondent /Ex-parte Applicant. It does not indicate consideration in exchange of parcel of land L.R no. 8409/1 with 56 acres of land. It was annexed as exhibit E before the National Land Commission.

Parties agreed to canvass the application vide written submissions. The applicant filed written submissions in support of the application but from the onset and having looked at the application I will make the following analysis and determination.

Analysis and determination

The application as it is, is not clear on what orders the applicant is seeking for. From a glimpse of the application I notice that the applicant is seeking to enjoin parties for purposes of production of documents. The rules governing enjoinder of interested parties are very clear that such party must establish that he or she has a stake in the suit and such enjoinder will assist the court in effectually determining the matter. The applicant has not established that the parties sought to be enjoined are necessary parties to this suit.

Enjoining such parties would be an abuse of the court process. The current application is not grounded in any law and procedure thus the court cannot grant orders in a vacuum. See the case of Noel George Khaaba v Wanandegge Housing Co-op Society Limited [2014] eKLR where the court held as follows:

"The application is also plain and not grounded on any law. The respondent submits that this is an omission and leaves the respondent and the court bewildered as to which direction the orders sought are derived. The court cannot merely grant orders from the wilderness or even willows. The respondent puts it thus;

The law is wide, and has very many provisions in that without being specific, the court cannot just grant an order without being told as to what the prayer is based on I entirely agree with the submissions and grounds of opposition by the respondent. I need not repeat the same. This application lacks an iota of seriousness. It is not an investment in a conscious search for the truth or even fairness. Inasmuch as I empathize with the applicant, a lay person who has all along conducted his case in person, I must confess that sense dictates things are done per custom. One cannot dare indulge in areas grey without consultation and come out clean. This creates confusion and clumsiness with disastrous consequences to the party and many others. This must be discouraged in situations like we now face.

The court is also alive to the fact that Judicial Review is a very limited process and the court's mandate, though powerful, is restrained to issues of abuse of power. Lord Hailsman, in the case of *Chief Constable of the North Wales Police v Evans* described the purpose of Judicial Review as. "To ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court"

Therefore enjoining parties to this suit would increase evidence that should have been factored into the decision (*whether the Ex parte Applicant rightfully owns his land*) rather than to enunciate the details of the decision making process (*whether the 1st Respondent conducted a fair hearing*)

I will therefore not belabor much on this application as it is an abuse of court process. The same is therefore dismissed with costs to the respondents.

DATED AND DELIVERED AT ELDORET THIS 26TH DAY OF SEPTEMBER, 2019.

M. A. ODENY

JUDGE

RULING READ in open court in the presence of Miss.Odwa and the Interested Parties.

Mr. Mwelem – Court Assistant