



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAORK

ELC CAUSE NO. 520 OF 2017

FORMERLY NAKURU ELC NO. 233 OF 2012

HENRY MWANGI MBURU & 111 OTHERS.....PLAINTIFFS

VERSUS

JOHN OLE NCHOE & 84 OTHERS.....DEFENDANTS

RULING

By a Notice of Motion dated 29th November, 2018 the Applicant sought for orders to be enjoined as the 113th to 134th Plaintiffs, an order for cancellation of any title resulting from the sub-division of Land Parcel Cis Mara/Olopito/778 and a declaration that the resurveying of the said parcel be declared null and void.

The Application is based on the grounds that the Applicants are likely to be affected by orders likely to be issued in respect of the suit herein and that the applicants have identifiable stake in the suit and any orders made in the matter will adversely affect them.

The Application is further based on the grounds that the Defendants have sub-divided the suit land despite the existence of a court order. In support of the application there is a Supporting Affidavit sworn by Justus Nyabuto Auta who is the 68th Plaintiff in which he deponed that the suit herein was premised on Land Parcel No. Cis Mara/Olopito/788 which despite the existence of a court order the Defendants have sub-divided it into Parcels No. 5556 to 6350 and new titles issued and that the same was done to defeat the cause of justice.

The Application was opposed by the Defendants who averred that the Application is bad in law and is only meant to create confusion and delay the hearing of the matter herein. He stated that no evidence was shown by the Applicants to show that the aforesaid sub division took place. He further contends that the Applicants have not met the threshold to be granted an order of joinder as a party and that the Applicants ought to make the Application themselves and not by proxy.

I have read the Application before me and the submissions filed by the parties and the issue for determination is threefold. Whether the Applicants have established a case for joinder as plaintiffs, whether an order for cancellation of titles can be issued and who bears the costs of the Application.

In answering the first issue, the Applicants contend that their original suit land was sub-divided and new titles issued which sub division in their opinion was only meant to defeat the cause of justice. From the Application filed despite the Applicants contention of the aforesaid sub-division they have not disclosed who were the beneficiaries of the said sub-division. The Applicant is the 68th Plaintiff and he averred that he has the authority of the 2nd, 55th, 56th, 58th, 64th, 66th, 68th, 78th and 84th plaintiffs and the Application is based on the joinder of other Plaintiffs.

In the Application for joinder one must establish an interest in the matter which interest must be distinct and clearly identifiable. The Applicant's interest is already defined in the subsisting suit and I don't see the reason why he should litigate on behalf of others to be included as Plaintiffs yet no evidence has been advanced before the court to determine the identities of the proposed Co-Plaintiffs, no evidence tendered to show whether they are beneficiaries of any purported sub division such as copies of titles or certificates of search and in view of the above it is my finding that the Applicants have not discharged the burden of proof as settled in law to have a party enjoined and consequently I decline to join the proposed Plaintiffs in the matter.

On whether the court do cancel the title deeds resulting from the sub division of Land Parcel Cis Mara/Olopito/788, the prayer here is for a permanent order being sought at interlocutory stage. The court is not seized of the titles to be cancelled and further more since the Applicant is alleging fraud in obtaining of the aforesaid titles such order can only be granted upon a full hearing and in the circumstances I do decline to grant the same.

The upshot of the above is that the Application lacks merit and I therefore dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **23rd** day of **September, 2019**

Mohammed Kullow

Judge

23/9/19

In the presence of: -

CA:Chuma/Kimiriny

Plaintiff:

Defendant:

Mr Masese for all plaintiffs except 2nd, 55th,56th,58th,64th,66th,68th,76th and 84th

Ms Nkurunah for 2nd,55th,56th,66th,58th,64th,76th and 84th Plaintiffs

Mr Kiptoo holding brief for Akango for the Defendants

Mohammed Kullow

Judge

23/9/19