



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 58 OF 2016

LOISE KANYAKORA WARUI.....1ST PLAINTIFF

JACKLINE WAMWIRUA.....2ND PLAINTIFF

VERSUS

GLADYS NJERI MURIUKI.....DEFENDANT

RULING

INTRODUCTION

The application before me is the Notice of Motion dated 31st May 2019 brought under **Section 1A, 1B, 3A and 63 (e) CPA and Order 51 Rule 1 CPR**. The applicants are seeking to be enjoined as interested parties in this suit. The applicants are named as Michael Muriuki, Anne Syliviah, Nyawira Muriuki and Evangeline Muthoni Muriuki. According to the applicant, the suit property registration Number MWERUA/KAGIONI/504 and later MWERUA/BARICHO/208 belonged to their late father Christopher Muriuki Warui which was later registered in the name of the defendant to hold in trust for them and who sub-divided the same for their benefit.

The applicants contend that they have beneficial interest in the suit land and that it is only fair if they are enjoined as interested parties so that they can protect their interest.

The said application is opposed by the plaintiffs who filed a replying affidavit and grounds of opposition sworn and dated 10th June 2019. In her replying affidavit, the 2nd plaintiff deposed that the parties in this case had agreed by consent to refer the matter for arbitration under **Order 46 of the Civil Procedure Rules** and that an award dated 12th July 2018 was filed in Court.

According to the plaintiffs, the defendant sold the family land leaving a portion of approximately 1½ acres. After the matter was referred for arbitration, all the parties presented their views and it was agreed that her mother Loise Kanyokora Warui (1st plaintiff) was to get one acre (1 acre) while the defendant was to get ½ acre. The respondent/plaintiff further contends that the application herein has been filed in bad faith with a deliberate intention to delay the finalization of this case.

I have considered the affidavit evidence both in support and in opposition to this application. I have also put into consideration the pleadings and the applicable law.

The plaintiffs have instituted this suit against the defendant seeking an order for determination of trust and registration of land parcel No. MWERUA/BARICHO/1408, 1412, 1413, 1416 and 1418 in the names of the plaintiffs. The above stated parcels of land are registered in the names of the defendant. The applicants are seeking to be enjoined as interested parties in this suit alleging that the defendant who is their mother was registered to hold the same in trust for them. The defendant who is the registered proprietor of the suit properties is capable of ventilating the issues being raised by applicants without them being enjoined as parties in this suit. The plaintiffs in their pleadings have stated that the suit property is an ancestral land which they are seeking an order to determine the existence of trust. It is the same issues which the applicants are seeking to be enjoined as interested parties for purposes of determining.

I find that it will not serve any useful purpose to enjoin the applicants when the issues will either way be determined with or without them being enjoined as parties. In any event, the defendant has denied the existence of any trust between her and the plaintiffs. It will therefore add no value to enjoin the applicants as interested parties to this suit but only prolong the determination of the suit.

CONCLUSION

In the final analysis, I find no merit in the Notice of Motion dated 31st May 2019. The same is hereby dismissed with costs to be in the cause.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 20th day of September, 2019.

E.C. CHERONO

ELC JUDGE

20TH SEPTEMBER, 2019

In the presence of:

1. Mr. Maina Kagio for Plaintiffs

2. Defendant – present