



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

MISC. APPLICATION NO. 11 OF 2018

CLEMENT O. ODHIAMBO.....PLAINTIFF/1STRESPONDENT

VERSUS

THE LAND REGISTRAR,

UASIN-GISHU COUNTY.....DEFENDANT/2ND RESPONDENT

AND

SIMON BERU IMOLI.....1ST APPLICANT

ALICE JAHENDA.....2ND APPLICANT

DAVID CENSAS.....3RD APPLICANT

AGNESS MUDEIZI.....4TH APPLICANT

SARAH KAGEHA.....5TH APPLICANT

EVANS AKAROMBA.....6TH APPLICANT

PHONES MIDEVA.....7TH APPLICANT

FRANCIS IMBAL.....8TH APPLICANT

ISAYA YASENA.....9TH APPLICANT

SHANNEL ANGATIA BERU.....10TH APPLICANT

JOHN LUMADEDE.....11TH APPLICANT

DINAH SHIVOKO.....12TH APPLICANT

RULING

The application dated 17/9/2018 seeks that the orders given on 23/7/2018 be set aside that all transfers and all transfers, dealings, interests or otherwise created on land parcel NO Soy/Soy/B10ck 10 (Navillus) 64, 65, 66, a, 68, 69, 70, 71, 72, 35, 59, 62 and or their subdivisions be and are hereby set aside in their entirety and the original title deed to revert to the status quo ante in the names of the trustees of Ishieywe Self Help Group pending the hearing and determination of the cases among others that are already in court being Eldoret E & L No. 97 of 2014, Eldoret E & L No. 260 of 2013 (involving Soy/ Soy Block 10 (Navillus) 1869, Eldoret E & L No. 66 of 2013 (Involving Soy/ Soy Block 10 (Navillus) 65 and in particulars 2411, Eldoret E & L No. 135 of 2015 (Involving Soy/ Soy Block 10 (Navillus) 71 (2000), Eldoret E & L No. 352 of 2014 (Involving Soy/Soy Block 10 (Navillus) 80 and 2560, Eldoret E & L NO.45 of 2015, Eldoret E & L No. 352 of 2014 (Involving Soy/Soy Block 10 Navillus 2560, Eldoret E & L No. 1015 of 2012 (formerly Eldoret HCC No. 133 of 2006, Eldoret E & L No. 97 of 2014, Eldoret E & L No. 337 of 2013 (formerly Eldoret CMCC No. 1024 of 2006,Eldoret CMCC No. 256 of 2005, Eldoret E & L No. 238 of 2016, Eldoret E & L No. 709 of 2012, Eldoret E & L No. 474 of 2013, Eldoret E & L No. 234 of 2016, Eldoret E & L No. 16 of 2017.

The application is based on grounds that the proceedings herein are otherwise abuse of the court process. Moreover, that there is an attempt to overreach. The plaintiff fraudulently filed the application to be allowed to inter alia sign transfer No.SOY/SOY/BLOCK.10/NAVILLUS/64 and 69,1636 and 2665.

The application states that the Respondent failed to disclose to court that there are other pending suits over the transfers;

The gravamen of the Respondents case is that the intended parties are not affected by the order of the court moreover that other trustees are deceased. Moreover, that with the death of other trustees, Mr. Clement Odhiambo is mandated to effect the transfers. Moreover that Mr. Simon Beru Imoli has neither been elected chairman of Ishieywe Self Help Group or any office.

The Attorney General's view is that the Applicant has not demonstrated the threshold to review under Order 45 of the Civil Procedure Rule 2010.

The interested party states that Mr. Clement Ooko Odhiambo's application dated 17/9/2018 did not refer to either to Civil suits on parcel of land mentioned in the application. He prays that the application be dismissed.

I have considered the application and the affidavits on record and the rival submissions and do find that the list of plot beneficiaries who need individual title annexed in the affidavit of Clement Ooko Odhiambo sworn on 20th July, 2018 refers to Fanuel Mudoki as the Owner of SOY/SOY/BLOCK.10/ NAVILLUS/1665 MEASURING 0.017 Ha. (at No.18) and yet the same parcel of land is being claimed by James Kiande in H.C.C.C Number 1013 of 2012 between Alice Jehanda and others =vs= Clement Odhiambo and others.

The same applies to SOY/SOY/BLOCK.10/ NAVILLUS/1679 claimed by Hesbon Mwanzo in the suit but intended to be transferred to Chrispinus Munyago. Plot Number 1779 and 1780 claimed by Sarah Kageha in the suit are to be registered in the names of Hammington Oriodo and Hudson Mwanzo respectively. This applies to SOY/SOY/BLOCK.10/ NAVILLUS/1763, SOY/SOY/BLOCK.10/ NAVILLUS/1681, SOY/SOY/BLOCK.10/ NAVILLUS/1679, SOY/SOY/BLOCK.10/ NAVILLUS/1881, SOY/SOY/BLOCK.10/ NAVILLUS/2404, SOY/SOY/BLOCK.10/ NAVILLUS/2548, SOY/SOY/BLOCK.10/ NAVILLUS/2511 sought to be transferred to individuals by the trustees despite the pending disputes.

I do find that the orders of the court given on 23rd July, 2018 were made without affording the parties in court Number 1015/2012 on hearing.

This application is brought under the provisions of section 80, and 3A of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules which provide that:

“Section 80. Review

Any person who considers himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

[Order 45, rule 1.] Application for review of decree or order.

“1. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”

Therefore, Order 45 of the Civil Procedure Rules, 2010 is very clear that a court can only review its orders if the following grounds exist: -

(a) There must be discovery of a new and important matter which after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or the order was made; or

(b) There was a mistake or error apparent on the face of the record; or

(c) There were other sufficient reasons; and

(d) The application must have been made without undue delay.

The pertinent issue for determination herein, therefore, is whether the Appellant has established any of the above grounds to warrant an order of review

I do find that there are sufficient reasons for reviewing the orders made on 23/7/2018 being failure to serve the affected parties and failure to disclose that there exist suits in respect of some of the properties to be transferred to beneficiaries hence the same are hereby set aside.

However, I do hesitate to strike out the Miscellaneous Application dated 3rd May, 2018 and do Order that all affected person to be served with the application for purposes of hearing and determination of the said application. The costs of this application to be borne by Clement Ooko Odhiambo the Respondent. Orders accordingly.

Dated and Delivered this 10th day of September, 2019.

A. OMBWAYO

JUDGE