



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 108 OF 2012

[Formerly Eldoret Hccc No. 9 of 2003]

ERINYIT EPORON NGURUKA..... 1ST PLAINTIFF
LODUPORO EKITUI MURECHEO.....2ND PLAINTIFF
STEPHEN LOKITOI KASKOUT.....3RD PLAINTIFF
WILLIAM NG'IRO.....4TH PLAINTIFF
KARIUKI GICHUHI.....5TH PLAINTIFF

VERSUS

NATIONAL LAND COMMISSION.....1ST DEFENDANT
DIRECTOR OF LAND ADJUDICATION SETTLEMENT.....2ND DEFENDANT
DIRECTOR OF SURVEYS.....3RD DEFENDANT
REGISTRAR OF LANDS, UASIN GISHU COUNTY.....4TH DEFENDANT
LONRHO AGRI-BUSINESS (EA) LTD.....5TH DEFENDANT
ESTATE OF MARK KIPTARBEI TOO.....6TH DEFENDANT
FANKIWA LIMITED.....7TH DEFENDANT

RULING

1. The 6th and 7th Defendants filed the Chamber summons dated 6th May, 2019 seeking to be struck out of the suit and costs. The application is based on the five (5) grounds on its face and supported by the affidavit sworn by Sophia Chemengen, one of the administrators on the 6th May, 2019 summarized as follows;

(a) That the pleadings filed by the Plaintiffs shows that they were allegedly employees, workers and or labourer of the 5th Defendant and there is no nexus established between their claim and the 6th and 7th Defendants.

(b) That paragraph 4 of the Amended Originating Summons confirms that the 5th Defendant was the last registered proprietor of the suit property and as the 6th and 7th Defendants have not been shown to have participated in evicting the Plaintiffs, there is no cause of action against them.

(c) That the Plaintiffs' suit against the 6th and 7th Defendants is incompetent, an abuse of the court process and they should be struck out of the suit.

2. The application is opposed by the Plaintiffs through the undated replying affidavit sworn by Erinyit Eporon Nguruka, the 1st Plaintiff, filed on the 9th October, 2019, summarized as follows;

(a) *That the 5th and 7th Defendants are Companies of the late Mark Kiptarbei Too represented by the 6th Defendant.*

(b) *That the 7th Defendant is the major holder of a number of titles consisting the suit properties.*

(c) *That the Plaintiffs have no objections to allowing the names of the 5th and 6th Defendants being struck out of the suit as they undertake further amendment to the originating summons.*

3. The application came up for hearing on the 4th November, 2019 when M/s Chesor for the 6th and 7th Defendants, and Mr. Baraza for the Plaintiffs, made their oral submissions for and against the application.

4. The following are the issues for the court's determination;

(a) *Whether the 6th and 7th Defendants are necessary parties for the determination of the issues herein.*

(b) *Who pays the costs?*

5. The court has after considering the grounds on the application, the affidavit evidence, the oral submissions by learned Counsel, and the pleadings come to the following conclusions;

(a) That the Plaintiffs' Amended Originating Summons at question (c) have posed the issue of whether ***“the purported sale, transfer, alienation and/or allocation of the Land Parcel L. R. No. 7739 or part hereof to the 7th defendant (respondent) and other persons to the exclusion of the Plaintiffs was done in compliance of the law, and if not whether they possess good title.”***

That question alone makes the 7th Defendant a necessary party and goes to show that the Plaintiffs have a reasonable cause of action against that party, even without going to the other paragraphs of the originating summons.

(b) That there is no specific reference of the 6th Defendant in the whole body of the Amended Originating Summons, and as the Plaintiffs have conceded that their claim against that party be struck out, the court finds merit in the application limited to the striking out of the 6th Defendant only. The Plaintiffs appear to suggest that the 5th Defendant's name should be struck out also but there was no prayer to that effect before the court.

(c) That the 6th Defendant is obviously entitled to costs in terms of the provision of **Section 27 of the Civil Procedure Act Chapter 21 of Laws of Kenya** having succeeded in their application.

6. That for reasons set out above, the court finds partial merit in the chamber summons dated the 6th May, 2019 which is hereby allowed limited to striking out the 6th Defendant from the suit. The Plaintiffs do pay the 6th Defendant's costs.

Orders accordingly.

Dated and delivered at Eldoret this 20th day of November, 2019.

S. M. KIBUNJA

JUDGE

Ruling read in open court in the presence of:

Mr. Mitei for Oburu for Plaintiffs.

No appearance for 1st to 4th Defendants.

Mr. Oyo for Chesor for 5th, 6th and 7th Defendants.

Christine: Court Assistant