



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 496 OF 2017

JOSEPH WAWERU MWAURA.....1ST PLAINTIFF

CHEGE KIARIE.....2ND PLAINTIFF

MBOI CHEGE.....3RD PLAINTIFF

-VERSUS-

FRANCO N. KOIKAI.....1ST DEFENDANT

ONGWE BENARD MONTE.....2ND DEFENDANT

RULING

The Application before me is the Notice of motion dated 7th October, 2015 brought under order 2 Rule 15 of the Civil Procedure Rules (2010) seeking to strike out a Notice of Motion dated 29th September, 2014 in ELC No. 269 of 2014 by the Respondents and/or the dismissal of the said Notice of motion as being Res Judicata and costs of this instant Application.

The Application was based on the grounds that the Respondents herein have sued the Applicants over their purchase of LR No. NAROK/CIS-MARA/OLOLUNGA/131 and that the Applicants have no proprietary interest in the said land and are not in occupation and possession of the suit land and thus the same is alien to them and hence there is no cause of action occurring to them.

The Applicant further contends that if the Respondents are referring to the Parcel of land known as NAROK /CIS-MARA/NKOBEN/131 then the same has been determined by the Narok Chief Magistrate on 20th December, 2012 and thus the Respondents suit is res judicata and an abuse of the process of the court vexatious, scandalous.

The Application was supported by the Affidavit of Franko N. Koikai who averred and expounded on the grounds aforesaid.

The Application was opposed by the Respondents by way of a Replying Affidavit. The Respondents have averred that the subject matter in this case relates to LR NAROK /CIS-MARA/NKOBEN/131 and not NAROK/CIS MARA/OLOLUNGA/177 as stated in their plaint. The Respondents also aver that the applicants have sold to them the said parcel at a consideration of kshs. 8,000/- per acre and they obtained the relevant consent of land control board and after being shown the parcel of land they left their children on the land.

The Respondent further states that the Applicant had sued their children on the land and not them who were the owners.

When the Application came for hearing before me on the 8th November, 2017 the parties consented to the filing of the Application by way of written submissions and pursuant to the above the Applicants have filed their submissions on the matter and the Respondents as at the writing of this ruling are yet to file their submissions.

I have read the Application before me and the Applicants Supporting affidavit together with the annexures thereon plus the submissions filed and the Respondents replying affidavit in opposition to the application and the issue for determination before me are two issues namely:-

- 1. Whether the suit and plaint raises a cause of action against the Applicants**
- 2. Whether the suit herein is res judicata**

In answering the 1st question I have looked at the plaint filed by the Respondents' herein and the plaintiffs' in paragraph 4 of the said plaint

averred that being members of Kabontana Farmers Co-operative Society they purchased 400 acres of land from the Defendants L.R No. Narok/Cis Mara/Ololunga/177 but the defendant settled them on LR No Cis Mara/Nkobon/131. The Plaintiffs in the instant Application have annexed JWM1 what they purport to be an agreement for sale. However, upon perusal of the same I do find that the same is not a sale agreement as alluded. The same does not show who the vendors were and the purchasers neither does it show which land was being purchased. The alleged agreement is merely a letter by the Directors of the Kabontana Farmers group appointing Duncan commercial agencies to purchase 400 acres of land. I have not seen the applicant either acknowledging to sale or appending their signatures thereon as offering any land for sale and obtaining consideration thereof.

The Applicants have also stated that they are strangers to the land and have annexed a certificate of search which shows that LR NAROK CIS MARA/OLOLUNGA/131 is registered in the name of another person namely Elijah Pareno Sororonyi. From the above therefore I don't see how a cause of action arises and I do find that the plaint as filed does not disclose any cause of action against the Applicant.

On the 2nd issue I have read the judgement by the Chief Magistrate and find that the parties herein have litigated upon the same land before the said court and the Respondent rather than refer an appeal against the judgement opted to file the instant suit and I find this is res judicata.

The upshot of the above is that I find the instant suit as frivolous vexation, and abuse of the court process and I therefore allow application dated 7th October, 2015 in terms of prayers (a) and (b) thereof and award costs accordingly.

DATED, SIGNED and DELIVERED in open court at NAROK on this 26th day of JANUARY, 2018

Mohammed Noor Kullow

Judge

26/1/18

In the presence of:

Mr Langat holding brief for Andama for the Defendant

N/A for the Plaintiffs

Mohamed Noor Kullow

Judge

26/1/18