



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC. PET NO. 5 OF 2017

MICHAEL BETT SIROR.....PETITIONER

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE HON ATTORNEY GENERAL..... 2ND RESPONDENT

STEPHEN SUGUT

JEREMIAH CHERUIYOT

JACKSON KOECH

JOSEPH MITEI

RAPHAEL KOECH

KIPKEMOI RUTO.....12TH INTERESTED PARTY/ APPLICANTS

PAUL K. RUTO

K. KETER

BENJAMIN TIROP

KIMUTAI NGENY

CHERUIYOT CHEPKWONY

VERONICA CHEPCHOR

ROSEBELLA MAIYO.....INTERESTED PARTIES

RULING

1. The Notice of Motion dated 4/12/2017 seeks the orders that the Proposed Interested Parties/Applicants be joined as Interested Parties to the petition and that upon such joinder they be granted 21 days to file and serve a reply to the petition dated 14/7/2017. They also seek that other parties already in the suit be, subsequent to the filing of such reply granted leave to file replies to the petition.

2. The applicants' grounds for the application are that they are bona fide purchasers for value of the land **LR No. 6614/6** - Kitale, Trans-Nzoia County otherwise known as **Tunen Farm**; that they are in actual possession of the suit property, that the petitioner holds the suit property in trust for them, and that by virtue of contract, equity, and/or adverse possession the petitioner ought not claim exclusive proprietorship of the suit property, and that there is a titling programme being conducted by the Government by which titles will be issued to the applicants, yet the petition seeks to stop the titling programme and issuance of titles to the applicants. The applicants therefore aver that they would be affected by the orders sought if they are granted, yet they have been pursuing titles for years. They therefore intend, if joined

to defend their interests. They also aver that the proposed joinder if allowed would enable the court to effectually and completely adjudicate and settle questions involved in this petition. Further, they aver that the other parties would not be prejudiced by orders that the applicants be enjoined to these proceedings.

3. I have noted that the petitioner has exhibited to his supporting affidavit documents that to show that the land was the focus of attention by numerous persons, and that it was likely to be subdivided into numerous portions which would benefit persons whom he calls “members of public”.

4. Without more, I find that now that the proposed interested parties have come forward to claim that they have an interest in the subject of this petition, and to urge that they be heard before it is determined, the question is whether this court should shut them out.

5. I must mention that this petition cannot be an alternative to the process of litigation over title through other proceedings. Validity of title and private interests should be pursued through other avenues. This is a claim for violation of rights by the petitioner which primarily focuses on the actions of Government in relation to the suit land. At paragraph 19 of his petition the petitioner avers that the interested parties whom he has enjoined have filed some cases seeking cancellation of his title to LR. No. 6614/6. I find that if other litigation is pending between them and the petitioner, they are indeed interested parties in this matter and truly the pronouncements of this court in judgement in the instant petition may affect their interest.

6. On the contrary the applicants in the instant application have not demonstrated any claim filed against the petitioner. Their purported claim is supported by numerous copies documents whose veracity this court will not have the opportunity to examine and rule on in this petition.

7. On the grounds raised in opposition to the motion is that the already enjoined interested parties represent the interests of the proposed interested parties and therefore the outcome would affect all of them regardless of whether or not the instant application is granted.

8. As admitted by the applicants joinder in proceedings is not as of right. A party must justify his application for joinder. I have considered the case of *Francis Kariuki Muruatetu & Another -vs- Republic & 5 Others Supreme Court Petition No. 15* as consolidated with *No. 16 of 2013 2016 eKLR*.

9. One of the criteria for joinder is whether the personal interest at stake is identifiable and is proximate enough. In this regard, it cannot be said that each and every of the applicants now seeking joinder have demonstrated they have a stake in the subject matter land. Only a few copies of documents have been exhibited.

10. In my view, there would be no prejudice to the other parties if the applicants were enjoined into these proceedings. However the very fact that the same counsel representing the other interested parties has been employed to represent the current applicants speaks volumes about what approach may be adopted during the course of the hearing. And this is where the petitioner’s submission that “the applicants have not demonstrated how different their case is from that of the other interested parties already in the suit”.

11. I have already stated that private interests should be pursued in alternative forums. This court, while sitting in judgment over this petition will pronounce a decision on public law, with regard to the rights of the petitioner vis-a-vis the governmental agencies involved. And I do not understand the applicants as saying they have existing disputes in court with the petitioner.

I therefore find no need to order joinder of hundreds of potential litigants in this suit especially bearing in mind that they may not have anything more than private interests to protect, which, in any event this petition cannot decide. For these reasons I therefore dismiss the application dated 4/12/2017 with costs.

Dated, signed and delivered at Kitale on this 28th day of February, 2018.

MWANGI NJOROGE

JUDGE

28/2/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty/Collins

N/A for the Petitioner

N/A for the Respondents

COURT

Ruling read in open court in the absence of the parties and their counsel.

MWANGI NJORGE

JUDGE

28/2/2018