



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 26 OF 2015

PAUL CHERUIYOT TERER (as administrator to the estate of

KIPTERER ARAP KOSKE – DECEASED).....1ST PLAINTIFF

ELIJAH ARAP LANG'AT ALIAS

KIPTONUI ARAP LANGAT.....2ND PLAINTIFF

KIMUTAI MWEL.....3RD PLAINTIFF

VERSUS

KESSES KELCHIN FARM LTD.....DEFENDANT

AND

UASIN GISHU COUNTY GOVERNMENT...INTERESTED PARTY

RULING

The defendant, **Kesses Kelchin Farm Ltd** has come to court with an application dated 29.4.2015. The defendant seeks an order that the applicants being 495 in number as per the list dated 24.4.2014, be enjoined in the suit as co-defendants and that they be granted leave to file their pleadings. The application is based on grounds that the defence filed does not raise issues relating to the co-defendants. The applicants are owners of that parcel of land known as L. R. No. 9621/Kesses Kelchin Farm, the suit land and are in actual possession of their respective portions wherein they have developed and reside. The suitland was surveyed and divided in 1973 according to the shares held by each member.

The applicants claim that the shareholders, purchasers for value and the applicants are over 1460 and any order and/or decision on ownership of suitland by the honourable court shall adversely affect them and particularly their rights and entitlement to their lawful parcels of land. The plaintiffs are neither shareholders nor members of Kesses Kelchin Farm and do not reside in the suit land. The applicants claim to have immense interest in the outcome in this case since if the plaintiffs' claim succeeds the applicants' who are bonafide shareholders of the defendant stand to be evicted. Moreover, that the plaintiffs are strangers who want to unduly benefit from the suitland upon getting wind that the sub-division process of the suit land is due to commence. That member register of the co-defendants closed way back in 1973 and the plaintiffs cannot now be heard to claim to be members over 42 years later.

The applicants who are the shareholders and owners of the suit land and the directors of the defendant have feuds and disputes over ownership of the suit land which have culminated in Eldoret Judicial Review No. 3 of 2012, Nakuru Misc. Civil Application No. 70 of 2003 and Chief Magistrate's Court Award No. 44 of 2011. That despite the plaintiffs not being shareholders and neither being in occupation of the suit land and their claim being statute barred the defendant has entered into a consent restraining any survey being carried out vide a consent dated 10th February, 2015.

The applicants are apprehensive that the directors of the defendant and the plaintiffs have colluded and intend to stage manage this suit and clandestinely dish out the suitland to the plaintiffs who are strangers and land speculators. That unless this application is allowed, the applicant shall be condemned unheard and occasion miscarriage of justice.

In the supporting affidavit, John Arusei Kiptoo states that the suitland herein measures 2005 acres and was acquired in 1968 from a colonial settler at a consideration of Kshs. 240,000 wherein the shareholders contributed Kshs. 120,000 and balance of Kshs. 120,000 was financed by Agricultural Finance Corporation. The suitland was surveyed and sub-divided in 1973 according to the shares held by each member and

member register closed since there was no more land for distribution for new members. That however, some directors fraudulently continued receiving money from new members despite the fact that there was no land for alienation. The applicants are in actual occupation and that the plaintiffs are not the shareholders and are not in occupation of the land inter-alia.

Samuel Tonui, Shadrack Tuei Rono, David Kipkosgei Bii, Kipyegon Bwalei and Samson Kipkering Kirwa, Directors Kesses Farm Ltd filed replying affidavits stating that they are directors of Kesses Kelchin Farm Ltd and are sanctioned by the defendant to swear the replying affidavits on behalf of the defendant. They state that John Arusei Kiptoo is not a director and that the directors of the company are capable of protecting the company will list the land distributed to shareholders according to individual shares. He states that John Arusei Kiptoo is not a shareholder and that the application has been made without the authority of the applicants. He states that there is no authority by the alleged applicants that Mr. Arusei files the application.

Paul Cheruiyot Terer states that there is no authority sanctioning the applicants to make the application and that the master roll is doctored. He further states that his father bought shares in 1968. He believes that the applicant wants to collect money from the alleged applicants. The suit land is registered in the name of Koros Kandie Company and not the applicants. Most importantly, the deponent states that John Arusei Kiptoo is not a director of Kesses Kelchin Farm Limited.

I have considered the application, replying affidavit and rival submissions of the applicant, the plaintiffs and the defendants and do find that the applicants allege that they are in possession of the suit property. The respondents do not dispute the allegation that the applicants are in actual possession of the suit property since 1973 and that they have built homes on the said land and that the decision of court is likely to affect them. The plaintiff is seeking orders that land reference No. 9621 be shared out amongst the members of the Kesses Kelchin Farm Limited in accordance with their shareholding. The plaintiffs further claim that they be awarded 6.38 acres, 5.54 acres and 3.2 acres respectively by the defendants and that the parties be chased out of the suitland. I do find that the applicants have established that they are interests in the property and therefore ought to be enjoined.

On the issues of the authority by the applicants to file the application, I do find that the letter of authority is signed by the firm of Limo R. K. as opponent to the applicants and therefore, the same is defective. It is trite law that the letter of authority should be signed by the parties and not the advocate. However, I do find that the applicants have demonstrated that they are in occupation of the suit property. It is also admitted that the applicants are in possession of the suit property and therefore, it is only fair that they be enjoined as interested parties to file defence within the next 30 days through one representative. Orders accordingly.

Dated and delivered at Eldoret this 24th day of April, 2018.

A. OMBWAYO

JUDGE