



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

PETITION NO. 12 OF 2017

(Machakos HCCC No. 121 of 2011)

PARSALOI OLE MEIKOKI AND OTHERSPETITIONERS

VERSUS

THE COMMISSIONER OF LANDS.....1ST RESPONDENT

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

KAJIADO DISTRICT SURVEYOR.....3RD RESPONDENT

KAJIADO DISTRICT LAND ADJUDICATION OFFICER.....4TH RESPONDENT

AND

NKANUMA OLE LEMORARA.....1ST INTERESTED PARTY

DANIEL NKAYIA OLE MUESENYA.....2ND INTERESTED PARTY

MATIPEI OLE NTEETU.....3RD INTERESTED PARTY

MOSES MOOKE LOONYSATI OLOLOUSA.....4TH INTERESTED PARTY

FRANCIS MANTA SIKINAN.....5TH INTERESTED PARTY

NTUMUNA OLE KOLEI NYOYKO.....6TH INTERESTED PARTY

ADAM WITHEY.....7TH INTERESTED PARTY

LILLIAN WAKIYA MWAURA

(TRUSTEE FOR ANTOINE KABIRU).....8TH INTENDED INTERESTED PARTY

RULING

What is before Court for determination is the 8th Intended Interested Party's Notice of Motion application dated the 22nd January, 2018 brought pursuant to Section 3A of the Civil Procedure Act, Order 40 rule 2, 3, 4, and Order 51 rule 1 of the Civil Procedure Rules, Article 23(1) of the Constitution and all the other enabling provisions of the law.

The Applicant seeks the following orders:

1. That the Applicant be enjoined in this matter as an interested party.
2. That a declaration be made that the court orders dated the 18th May, 2011 did not in any way affect the 8th Interested Party's land parcel number KAJIADO/ OLKIRAMATIAN/15.

3. That the Land Registrar be ordered to lift the restriction on title number KAJIADO/ OLKIRAMATIAN/ 15.
4. That the Petitioner be prohibited from any further dealings in title number KAJIADO/ OLKIRAMATIAN/ 15.
5. The costs of the application be provided for.

The application is supported by the affidavit of LILLIAN WAKIYA MWAURA the Applicant herein where she deposes that she is the legal and rightful (as trustee of her grandson ANTOINE KABIRU) of the piece of land known as KAJIADO/ OLKIRAMATIAN/ 15 measuring 48 hectares hereinafter referred to as the 'suit land'. She avers that in the year 2000 she bought the suit land from FRANCIS MANTA SIKINAN the 5th Interested Party (now deceased) and the same was a subdivision of land owned by him. She claims on 17th December, 2017 the deceased wife WINNY SIKINAN informed her that there was a case in Kajiado involving her husband's land KAJIADO/ OLKIRAMATIAN/ 16 and others. She states that on 18th December, 2017 she perused the Court file and found that the suit land was not subject to litigation and that indeed the conservatory order issued on 18th May, 2011 was against land parcel number KAJIADO/ OLKIRAMATIAN/ 6/7/10/11/12//21/22/23/24/25. She explains that she intended to transfer the suit land to her grandson who has attained the age of majority, but on 16th January, 2018 when she applied for search from the Land Registry, she was shocked to find that on 18th November, 2011, a Court Order was registered against the suit land that **no dealing to be registered until further order vide Civil Case No. 121 of 2011 SRM (MRS HCC) dated 18th May, 2011.**

She states that she was not aware of the Civil Suit No. 121 of 2011 and neither was she a party to it. She reiterates that the Court Order registered against her title without her knowledge inhibiting any dealings in the suit land is a violation, denial, infringement and threatening her fundamental freedom in the Bill of Rights as enshrined in the Constitution. She is apprehensive that any more orders delivered by the Court would be prejudicial to her interest and therefore suffer irreparable loss and damage. She contends that she has met the criteria to be enjoined as an Interested party in the proceedings herein as together with her grandson they will be affected by the decision of the court when made. Further ,that as a result of the Court Order, she has been unable to transfer the suit land to her grandson.

The Application is opposed by the Petitioners who filed a replying affidavit sworn by KASHINGA OLE MEIKOKI who is one of them, where he deposes that they have a claim over KAJIADO/ OLKIRAMATIAN/ 6/ 7/ 10/ 11/ 12/ 21 / 22/ 23/ 24 and 25 as they are indigenous inhabitants of the Ol Kirimatian Registration Section within Kajiado District, which has been and was community land before its adjudication. He avers that a copy of the Green Card issued on 3rd March, 2011 and which was produced before court in the affidavit of PARSALOI OLE MEIKOKI dated the 17th May, 2011 shows that the suit land was subdivided from KAJIADO/ OL KIRIMATIAN/ 12 hence properly within the scope of the conservatory orders contrary to the Applicant's claim. He contends that the orders issued by the Court on 18th May, 2011 specifically prohibited the Interested Parties from any dealings in the parcels of land known as KAJIADO/ OLKIRIMATIAN/ 6/ 7/ 10/ 11/ 12/ 21 / 22/ 23/ 24 and 25 or over any portion of land allegedly excised or to be excised or set apart as well as subdivided from the same, hence therefore it does not matter when the parcel of land claimed by the Applicant was subdivided, the conservatory orders are applicable. He insists the conservatory orders also applied to the suit land and it is pertinent for the status quo to be maintained pending the outcome of the suit. He claims the Petitioners are in occupation of the suit land and lifting the conservatory orders will be prejudicial and is likely to cause irreparable damage to them. He explains that as per the original green card initially attached to the supporting affidavit of PARSILOI OLE MEIKOKI which was attached to the Petitioners' application dated the 17th May, 2011, it shows that KAJIADO/ OLKIRAMATIAN/ 12 was subdivided to KAJIADO / OLKIRAMATIAN/ 15 and KAJIADO / OLKIRAMATIAN / 16 , and therefore the Petitioners' disclosed all particulars concerning the suit property. He reiterates that there is need for expeditious disposal of this suit and allowing the Interested Parties application will only frustrate this objective by clouding the issues for determination. He states that lifting the conservatory orders on KAJIADO / OLKIRAMATIAN/ 15 will be prejudicial to the interests of the Petitioners' as they are currently in occupation.

The parties submitted on the application on 5th March, 2018 with the 7th Interested Party's Counsel intimating that he was not opposed to it. The Applicant reiterated her claim and submitted that the Petitioners' were well aware of the existence of her title from 28th February, 1993. She stated that the 1st Petitioner is deceased and should be substituted by his legal representatives. She denied that the Petitioners' are in occupation of her land and submitted that the conservatory orders were prejudicial to her and ought to be lifted. She stated that if the prayers are not granted, she wanted the Petitioners' to deposit security in court. The Petitioners submitted that the Court Order granted on 18th May, 2011 affected the suit land and hence should not be lifted as this can amount to a miscarriage of justice. He submitted that both the Petitioners and 8th Interested Party claim entitlement to the suit land. Further that the 5th Interested Party who sold suit land to the 8th Interested Party, did not have a good title to pass. He however did not object to the 8th Interested Party being enjoined to the suit. He submitted that a variation of the orders granted on 18th May, 2011 will expose the Petitioners to eviction. Further, that under Order 24 rule 3 of the Civil Procedure Rules, it was their view that there was no need to substitute the 1st Petitioner. The Applicant insisted that in 2011 the title number Kajiado Olkiramatian/12 did not exist and the Petitioners' got a blanket order.

Analysis Determination

Upon perusal of the 8th Intended Interested Party's Notice of Motion application dated the 22nd January, 2018 including the supporting and replying affidavits as well as the annexures thereon, the following are the issues for determination:

- Whether the 8th intended Interested Party can be enjoined in this Petition
- Whether the Court should vacate/set aside the orders granted on 18th May, 2011 restricting dealings on the 8th Intended Interested party's land KAJIADO/OLKIRAMATIAN/15 culminating in the registration of a restriction/caution over it.

On the question as to whether the intended 8th interested party can be enjoined in this Petition, Black's Law Dictionary 9th Edition, page 1232 defines an interested party as;

"A party who has a recognizable stake (and therefore standing) in the matter"

The 8th intended interested party seeks to enjoin the petition as she bought land parcel KAJIADO /OLKIRAMATIAN /15 from the 5th Interested Party and obtained title. It was confirmed that land parcel number KAJIADO /OLKIRAMATIAN /15 was a resultant subdivision from KAJIADO /OLKIRAMATIAN /12. She states that she has been adversely affected by the Court Order dated the 18th May, 2011 which led to the registration of a restriction/caution over her land which she is holding in trust for her grandson ANTOINE KABIRU. Further, that she intends to transfer the land to her grandson who is now an adult. She reiterates that it is important for her to be enjoined in the instant Petition as the Court can make orders in future that adversely affect them.

The 1st - 7th Interested parties including the Petitioners do not oppose the application for the joinder of the 8th intended Interested party to the Petition. However, the Petitioners oppose the lifting of the conservatory orders granted on 18th May, 2011 against land parcel number KAJIADO /OLKIRAMATIAN / 15 insisting it is a resultant subdivision of KAJIADO /OLKIRAMATIAN /12 which is one of the parcels of land in dispute where the conservatory order was registered against.

Order 1 Rule 10 of the Civil Procedure Rules stipulates as follows:

'(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit. (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.'

In the case of ***Joseph Njau Kingori vs. Robert Maina Chege & 3 others*** [2002]eKLR Nambuye J as she then was, provided the guiding principles to be adhered to when an intending interested party seeks to be joined in a suit and stated as follows:

' When the above principles are applied to the facts of these applications it is clear that the guiding principles when an intending party is to be joined are as follows:(1) He must be a necessary party; (2) He must be a proper party; (3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff; (4) The ultimate order or decree cannot be enforced without his presence in the matter; (5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.'

I note that the Applicant is the absolute proprietor of land parcel number KAJIADO /OLKIRAMATIAN /15 which she is holding in trust for her grandson. She claims she has been unable to transfer the land to her grandson because of the Court Order granted 18th May, 2011. In relying on the facts presented, Order 1 Rule 10 of the Civil Procedure Rules and being persuaded by the judicial authority cited above, it is evident that the 8th proposed interested party indeed meets the criteria set out for an interested party and her involvement will be necessary to enable the court effectually and completely adjudicate upon this Petition. Further that the ultimate orders and decree made in the Petition herein will not be enforced without her presence in the matter. I further find that no prejudice will be suffered by the Petitioners if the Applicant is allowed to be enjoined in this Petition.

As to whether the Court should vacate/set aside the orders granted on 18th May, 2011 restricting dealings on the 8th Intended Interested party's land KAJIADO/OLKIRAMATIAN/15 culminating in the registration of a restriction/caution over it. The Applicant contends that she purchased her land from the 5th Interested party before the Petition was filed. She denies that the Petitioners are in occupation of the suit land and the conservatory orders should hence not apply to her parcel of land. The Petitioners on the other hand insist that the court should not lift the Orders granted on 18th May, 2011 as the intended interested party may move with haste to interfere with the suit land and heavily prejudice them.

I note the Court Order issued on 18th May, 2011 restricted any dealings in KAJIADO/OLKIRAMATIAN/12 and that KAJIADO/OLKIRAMATIAN/15 is a resultant subdivision therefrom, although this was not expressly indicated in the Court Order. However I note that the Conservatory Orders issued by this Court on 18th May, 2011 touch on land parcels number KAJIADO/OLKIRAMATIAN/6/7/10/11/12/21/22/23/24 and 25 and they were issued pending the hearing and determination of the suit. I find that it would be prejudicial to vary and or set aside the said orders at this juncture as it is important to preserve the subject matter until suit is heard and determined. Since the Applicant and the Petitioners are staking claim over the suit land, with the sanctity of the title being in dispute, I will decline to set aside the conservatory orders issued on 18th May, 2011 until this Petition is heard and determined.

The costs will be in the cause.

Dated signed and delivered in open court at Kajiado this 13th day of June, 2018.

CHRISTINE OCHIENG

JUDGE