



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 566 OF 2017

NDIRAKANIA COMPANY LIMITED.....1ST PLAINTIFF

DAVID MACHARIA THIGA.....2ND PLAINTIFF

JOSEPH MUGWIMI MWANGI.....3RD PLAINTIFF

PETER GICHUNJI HEHO.....4TH PLAINTIFF

LUCY WAMBUI GITHAIGA.....5TH PLAINTIFF

NANCY NJOKI NGUNJE KARIITHI.....6TH PLAINTIFF

MICHAEL MUTUA MWENGA.....7TH PLAINTIFF

VERSUS

TADDEO MUIRURI MUNGAI.....1ST DEFENDANT

ROBERT MACHARIA KURIA.....2ND DEFENDANT

JAMES MUNGAI MUIRURI.....3RD DEFENDANT

MOSES MAINA NGUGI.....4TH DEFENDANT

EDWARD NJENGA MUCHAL.....5TH DEFENDANT

LAND REGISTRAR.....6TH DEFENDANT

RULING

What is before me is the plaintiffs' application dated 25th May, 2018 in which the plaintiffs have sought an order that the 6th defendant be summoned to appear in court to give information and produce certified copies of deed files, Green Cards, title deeds, a search and other records relating to L.R No. 6821 Block 135 together with the details of any subdivision thereof. The application is supported by the affidavit of the 2nd plaintiff and the grounds set out on the face thereof. The plaintiffs have contended that the 1st plaintiff is the owner of L.R No. 6821 Block 135 ("the suit property") and that the court had issued orders on 21st September, 2017 and 30th November, 2017 in favour of the plaintiffs for the purposes of safeguarding the property. The plaintiffs have contended that the 6th defendant has failed to register the said court orders against the title of the suit property on the ground that the title has been extinguished. The plaintiffs have contended that the 6th defendant has not provided any further details regarding the alleged extinguishment of the title for the suit property claiming that only the Chief Land Registrar can provide that information upon summons being served upon him by the court to do so. It is for the foregoing reasons that the plaintiffs have moved the court for the orders sought in the application under consideration.

When the application came up for hearing on 14th June, 2018, the advocate for 1st, 2nd, 3rd and 5th defendants informed the court that he had no objection to the application. The application was adjourned to 26th June, 2018 since some of the parties had not been served. On 26th June, 2018, Mr. Odawa for the plaintiffs urged the court to allow the application. There was no appearance for the 1st, 2nd, 3rd, 5th and 6th

defendants. The advocate for the 4th defendant who was present informed the court that he had no objection to the application.

I have considered the application together with the affidavit in support thereof. The following is my view on the matter. I have noted from the record that the plaintiff has not taken out summons to enter appearance for service upon the defendants. None of the defendants has entered appearance and filed a statement of defence. The advocates on record for the defendants have only filed notices of appointment. What this means is that the pleadings have not been closed. The plaintiffs want the Land Registrar to appear before this court to give evidence and produce documents relating to the suit property. I am of the view that the plaintiffs' application is premature. The court cannot conduct a hearing of a case in which the pleadings have not been closed. I am of the view that it would be unfair to compel the Land Registrar who is a party to this suit to give evidence in the matter before it has been given an opportunity to enter appearance and file a defence. From the wording of the prayers sought by the plaintiffs, I also get the impression that the plaintiffs are on a fishing expedition to some extent. I wonder why the plaintiffs would seek from the Land Registrar copies of title deeds.

I have said enough to show that the plaintiffs' application dated 25th May, 2018 is not for granting. The plaintiffs should wait for the pleadings to be closed and the suit listed for hearing. They can thereafter apply to the Deputy Registrar for witness summons to whoever they think has information that can assist their case. For now, no proper basis has been laid for the witness summons sought.

For the foregoing reasons, the Notice of Motion dated 25th May, 2018 fails and is dismissed with no order as to costs.

Delivered and Dated at Nairobi this 19th Day of July 2018

S. OKONG'O

JUDGE

Ruling read in open court in presence of:

Mr. Odawa for the Plaintiffs

Mr. Kabaka for the 1st, 2nd, 3rd and 5th Defendants

N/A for the 4th Defendant

N/A for the 6th Defendant

Catherine Court Assistant