



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 246 OF 2017

FORMERLY NAKURU HCC NO. 219 OF 2011

MERIN OLE TUYOTO & 124 OTHERS.....PLAINTIFFS

-VERSUS-

THE CHAIRMAN LIMANET GROUP

RANCH COMMITTEE.....1ST DEFENDANT

DISTRICIT LAND REGISTRAR.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

DANSON RIKANA SANOE.....4TH DEFENDANT

RULING

The Application before me is the Notice of Motion dated 14th March, 2018 which was brought under section 6, 3 and 3A of the Civil Procedure Act and order 51 of the Civil Procedure Rules. The Applicant seeks orders that pending the hearing and determination of the suit there be a stay of proceedings in Narok Criminal Case no. 715 of 2016 Republic –Versus-Parselian Ole Sururu. The Application is based on the ground that the Applicant had filed the suit herein with 124 others and presently resides on parcel No. **CIS-MARA/ILMASHARIANI/MORIJO/48** and that the complainant in the aforesaid Criminal Case was fraudulently registered as a proprietor of land parcel **NO. CIS MARA/ILMASHARIANI/ MORIJO/1304** while she was not a member of the Limanet Ranch. He further contends that the said parcel is part of **CIS MARA ILMASHARIANI/48** which is the subject of the substantive suit before this court and that if the criminal proceedings are not stayed he will suffer irreparable loss.

The Application was opposed by way of a Replying Affidavit that was sworn by one Sachwa Ole Naeni who is the secretary of the group ranch. He contends that the Application is based on hearsay and full of unsubstantiated facts. He states that the complainant are strangers and contends that the accused person in Criminal Case No. 715 of 2016 who is Parselian Ole Sururu is not among the original plaintiff and he has never been a member of the group ranch. He further contends that the accused name is not among the plaintiff's and he did not seek to be enjoined as a party or co-plaintiff and hence he should not benefit or be granted the orders sought.

I have read the Application before me and I have heard submissions made by counsel on behalf of the parties herein and the issue for determination before me is whether the court should exercise its supervisory powers of the Magistrate's court to order for stay of proceedings which are criminal in nature. In the instant Application the Applicant seeks the Environment and Land Court to stay proceedings before the Narok Magistrate's Court. I have read the pleadings filed in the substantive suit and the charge sheet that was annexed to the Application. I find that the subject matter in both is in respect of land parcel No. Cis Mara/Ilmashariani/Morijo/48 which is before the Environment and Land Court for hearing and determination. In view of that I find that this is a case in which the court can exercise its powers and its discretion to avoid an injustice to be occasioned and avoid the issuance of conflicting decisions.

Having found that the court can exercise the said discretion the other issue is to establish out whether the Applicant is a party to the suit. The respondent contends that the Applicant is not a member of the Group Ranch as claimed and that he has not sought leave of the court to be enjoined as a party to the substantive proceedings and thus not entitled to relief sought.

I had looked at the original plaint that was filed on the 12th September, 2011 and I had not found the Applicant as one of the Plaintiff's neither did he make any application later to be enjoined as a plaintiff. The Applicant in his Application did not attach any extract from the register of members to show that he is indeed a member of the Limanet group ranch and in the absence of the above I find that the Applicant cannot benefit from a cause that he is not a party to.

The upshot of the above is that I dismiss the applicant's Application dated 14th March, 2018 with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **6th** day of **July, 2018**

Mohammed Noor Kullow

Judge

6/7/18

In the presence of:

Mr Kambo holding brief for Mr.Ndeda for the applicant

N/A for the respondent

CA:Chuma

Mohammed Noor Kullow

Judge

6/7/18