



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 529 OF 2017

FORMERLY KISII ELC NO. 998 OF 2016

OLE KISIRA SIMON.....PLAINTIFF

-VERSUS-

SANKEI SAMWEL TASUR.....DEFENDANT

RULING

The Application before me is the Notice of Motion dated 14th July, 2017 which was brought under order 46 Rule 16 and Order 51 Rule 1 of the Civil Procedure Rules in which the Applicant sought for orders of setting aside of the arbitral award made on 25th April, 2016 and the suit heard.

Prior to the filing of the instant Application by an order made by the court on 24th October, 2016, the dispute between the parties was referred to the Trans Mara Land Adjudication Officer and Land Registrar to carry out an investigation and site inspection and file a report to the court in respect of:-

(i) The boundaries and delineation of parcel Number Trans Mara/Shartuka/178 and LR No. Trans Mara/Shartuka/970.

Subsequent to the above orders the land adjudication officer and the registrar visited the suit parcels and filed a report in which they made a number of observations that a sub-division was done which resulted in land parcel No. Trans Mara/Shartuka/907 and 1700 and as a result of this the above 2nd sub-division was cancelled vide Misc. Civil Case No. 52 of 2009 they further observed that parcel No. Trans Mara/Shartuka/907 does not exist on the ground as it was affected by the orders of court in Miscellaneous Civil Application No. 52 of 2009 and Misc. Civil Application No. 80 of 2011.

It is as a result of the above that the instant Application was filed. The Application is based on the grounds that the High Court Misc. Application No. 52 of 2009 did not mention the Applicant's title Trans Mara/Shartuka/970 and that no notice or demand for return of title was made to the applicant and the report is unsigned.

The Application was also supported by the Affidavit of the Applicant in which he deponed that the ruling in JR Application No. 52 of 2009 did not specifically refer to his parcel of land and that the arbitrator failed to use the original and genuine documents for the preparation of the report and lastly that the Arbitrator was impartial.

The Application was opposed by the Respondent by way of grounds of opposition stating that the court lacks jurisdiction to entertain the matter on the face of a consent order and that there is no arbitral award capable of being set aside and lastly the Defendant having title revoked does not have any locus standi to commence.

I have read the application before me and the grounds of opposition that was filed. The issue for determination before me is whether to adopt the report by the registrar or reject the same. From the record, the report was present pursuant to an order of court. The applicant contends that the basis in which his title was allegedly revoked was pursuant to a ruling of the court in Miscellaneous Civil Application No. 11 of 2009. I have looked at the said ruling and I find that the applicant was not a party to those proceedings and to contend that his title was revoked without him being accorded an opportunity will cause an injustice.

From the Application and the submissions made I find that there are so many issues that both the applicant and the respondent have raised issues that can only be resolved at a full hearing and since the suit before me is one that involves land which highly emotive it shall serve the wider interest of justice if both parties will be accorded the chance to call witnesses and produce the report.

The upshot of the above is that I will allow the application dated 14th July, 2017 and order that the suit herein do proceed to full hearing.

Costs in the cause.

DATED, SIGNED and DELIVERED in open court at NAROK on this 28th day of September, 2018.

Mohammed Noor Kullow

Judge

28/9/18

In the presence of:

Ms Adala holding brief for Bigogo for the defendant

Masikonde holding brief for Ogutu for the Plaintiff

CA:Chuma