

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 124 OF 2017

KANTET JAPIT.....PLAINTIFF

-VERSUS-

KOYA OLE KIMOLOL.....DEFENDANT

RULING

By an Application dated 24th August, 2017 filed under certificate of urgency and brought under order 1 Rule 10 (2) and Order 51 of the Civil Procedure Rules the Applicant sought for orders that the court stay the execution of orders given on 4th April, 2017 adopting a consent by the Plaintiff and Respondent, and the setting aside of the said orders and the Applicant enjoined in the suit as an interested party.

The application was based on the ground that the consent between the Plaintiff and the Respondent is prejudicial to the Applicant's interest in Land Parcel No. Narok Cis Mara/Olkinyei/611 as the parties entered into the said consent mischievously since the Defendant does not own any land known as Narok Cis Mara/Olkinyei/611.

The Applicant in an Affidavit in support of the Application sworn by Allan Obiero Onyango who is a director of the company stated that on the 24th June, 2014 the Applicant entered into a Sale Agreement with the Defendant/Respondent for a consideration of kshs. 5,950,000 and pending the completion of the sale the Applicant made a deposit of kshs. 4,900,000 and they obtained consent of the Land Control Board.

The Applicant further averred that on 4th April, 2017 the Plaintiff and the Respondent entered into a consent in disregard of his interest in the suit parcel of land.

The Application was opposed by the Plaintiff and argues that the court is functus officio and hence the claim is tantamount to opening the case. The plaintiff further argued that he is the legal and beneficial owner of the suit land and the Applicant's claim lies against the Defendant and not him.

I have read the Application before me and the submissions made by the counsel and the issue for determination before me is whether there exists any suit before the court after a consent to settle the matter was filed and if the Applicant is capable of being enjoined as an interested party.

It is not indispute that the Plaintiff and the Defendant on the 4th April, 2017 entered a consent to settle the matter and it is after this consent was only filed that the Applicant mounted the instant application. It is my view that once a consent is entered between parties that fundamentally settles the disputes and the court down tools and becomes functus officio unless in appropriate circumstances such a parties seeking orders of setting aside, or stay or vacation and in the circumstances I find that there exists no suit capable of the Applicant being enjoined as an interested party.

The consent that were entered were made by advocates completely instructed and there is no shred of evidence to point out the same was obtained through fraud and thus the Application is devoid of any merit and I dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 26th day of October, 2018.

Mohamed N. Kullow

Judge

26/10/18

In the presence of:

No appearance by the parties

CA:Chuma