



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. APPEAL NO. 192 OF 2017

GEORGE OTIENO OJANY.....APPELLANT

VERSUS

MATHEW OWUOR OJANY.....1ST RESPONDENT

JOHN OUMA OJANY.....2ND RESPONDENT

AGNES ADERA OYUGI.....3RD RESPONDENT

AND

HEZBOURNE OUMA ONG'ELLEH.....1ST INTERESTED PARTY

DAVE ODHIAMBO ORICHO.....2ND INTERESTED PARTY

BERNADETTE KASYOKA MBALA.....3RD INTERESTED PARTY

GRACE AWUOR.....4TH INTERESTED PARTY

RULING

1. Hezbourne Ouma Ong'elleh, Dave Odhiambo Oricho, Bernadette Kasyoka Mbala and Grace Awour, the Interested Parties, filed the notice of motion dated 5th March 2018 seeking to be admitted as "Interested Parties to the suit" and "be at liberty to file pleadings in relation to the suit" upon being admitted. They also pray for costs. The application is based on the six (6) grounds on its face and is supported by the affidavits sworn by 1st, 2nd and 4th Interested Parties on the 5th March 2018.
2. The application is opposed by Mathew Owuor Ojany, the 1st Respondent, through the document headed "Reply of Appeal" filed on 26th April 2018.
3. The application came up for hearing on the 14th May 2018 when Mr. Nyanga for the Interested Parties made his submissions in support of the application. Mr. Odeny, the learned counsel for George Otieno Ojany, the Appellant, indicated that his client was not opposing the application. The 1st Respondent and John Ouma, the 2nd Respondent, opposed the application in their submissions.
4. The issue for determination by the Court is whether the Interested Parties have established that they are bonafide purchasers for value without notice and whether there is need to enjoin them in the appeal proceedings at this stage.
5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence, the submissions by counsel for the Interested Parties and the 1st and 2nd Respondents in person, the record and come to the following conclusions;

a. That the Kisumu East District Land Disputes Tribunal proceedings in the record of appeal shows that the three Respondents filed the tribunal Case No. 63 of 2009 against the Appellant and another over Land Parcel Kisumu/Wathorego/139. That in his testimony, the 1st Respondent told the tribunal that he had filed the dispute because the Appellant had sold part of the land to Asewe Ogada and that he wanted the tribunal to resolve the dispute and share the land among the five sons of Ojany (deceased). The 2nd and 3rd Respondents also testified saying how their portions of the suit land had been fenced off by a person who had bought a portion of the land from the Appellant. The Appellant testified and told the tribunal that the suit land was his late parents homestead and was left to him as the last born. That he subdivided the land and retained his portion being Kisumu/Wathorego/3488 and that the family of Alex

Odongo took Kisumu/Wathorego/3490. That after considering the evidence tendered, the tribunal ruled on the 9th August 2010 that Kesia Atieno Osodo who was the 2nd Objector do retain the 1/3 portion of the suit land as ordered by the High Court in Succession No. 250 of 2009. That the remaining 2/3 portion be shared equally between Appellant and the Respondents equally.

b. That the tribunal award was read and adopted in Kisumu C.M. Land Case No. 1 of 2011 on the 1st February 2011. The Appellant, being dissatisfied with the tribunal award, filed appeal No. 15 of 2011 through the Memorandum of Appeal dated 25th February 2011 with the Nyanza Provincial Land Disputes Appeals Committee and made the requisite payment of Kshs. 3000/=, under receipt No. A6650243, of 28th February 2011. That following the repeal of the **Land Disputes Tribunal Act No. 18 of 1990** under **Section 31 of the Environment and Land Court Act No. 19 of 2011**, the appeal was brought to this court in accordance with the direction issued by the Honourable Chief Justice.

c. That from the depositions of the 1st, 2nd and 4th Interested Parties through their supporting affidavits sworn on the 5th March 2011, they got registered with the Parcels subdivided from the suit land on the 12th November 2010, 20th May 2013 and the 21st March 2011 respectively. The dates of their registration are confirmed by the copies of the title deeds for the parcels registered in their respective names attached to their depositions.

d. That in view of the findings in (a), (b) and (c) above, the court finds that the Interested Parties obtained registrations with the parcels subdivided from the suit land long after the decision of the Kisumu East Land Dispute Tribunal of 9th August 2010. That the Interested Parties could therefore not have been parties to the tribunal dispute as they had by then not obtained or acquired any legal interests over the suit land, that is Kisumu/Wathorego/139.

e. That as the matter before this court is an appeal on the decision and or award of the Kisumu East District Land Disputes Tribunal, and not an original suit as the Interested Parties appear to believe, there are no fresh pleadings to be filed or fresh evidence to be taken. That the pleading in this appeal consists of those filed before the tribunal, the Appeal Committee, the proceedings and award thereof. That accordingly the Interested Parties would not have any opportunity to file their pleadings even if they were enjoined in the appeal. That further, the Interested Parties are not without legal recourse, if any, as they would pursue their interests with the person or persons from whom they acquired their titles.

6. That from the foregoing, the court finds the notice of motion dated 5th March 2018 by the Interested Parties is without merit and is dismissed with costs to the Respondents.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 24TH DAY OF OCTOBER 2018

In the presence of:

Appellant Present

Respondents Present

Interested Parties Absent

Counsel Mr. Mweisigwa for Nyanga for Interested parties

Mr. Osodo for Odeny for Appellant

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE