



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**ENVIRONMENT & LAND CASE NO. 47 OF 2017**

**ERICK KIBIWOTT & 51 OTHERS.....PLAINTIFFS**

**- V E R S U S -**

**CHIEF LAND REGISTRAR & ANOTHER.....DEFENDANTS**

**R U L I N G**

***(Application to be enjoined as interested party; applicant claiming to own part of the land in dispute; application allowed)***

The application before me is that dated 18 July 2014 filed by Hasham Lalji Properties Limited. The application seeks two main prayers, one is for the said company to be enjoined into these proceedings as interested party, and the other is for an injunction, to preserve the land parcels LR No. 97231 and 9723/72 pending the hearing and determination of this suit.

To put matters into perspective, this suit was commenced in the year 2004 through an Originating Summons with the Chief Land Registrar as sole respondent. The applicants in the Originating Summons (whom for ease of reference I will refer to as the plaintiffs) sought to have ownership of the land parcel LR No. 9723. It is their case that this land was owned by one Bahadurali Nurani (Nurani), and that in the year 1985, he sold to the Government 377 acres; then sold 80 acres to the 1<sup>st</sup> plaintiff; and surrendered the balance, 20 acres to the Government by way of gift. The plaintiffs aver that the Government then subdivided the land vested in it into smaller plots which the Government sold to the plaintiffs. They thus wish to have the said land vested in them claiming that they deserve the land through the doctrine of adverse possession.

There was no appearance and the matter proceeded for hearing with judgment being given in favour of the plaintiffs. However, through an application filed on 27 September 2006, one Annah Kimitei the widow of one Nyongio Kimitei (deceased) sought to have the judgment set aside and further sought to have herself included in the matter as interested party. The application was allowed and she did file a reply to the Originating Summons. Her position is that her late husband and Mr. Bahadurali, together in the year 1963, purchased the land parcel LR No. 9723 which was measuring 795 acres, with Mr. Bahadurali being entitled to 477 acres. She claimed that in the year 1979, Mr. Bahadurali agreed to sell his share to Mr. Kimitei, less 20 acres which he donated to the Government as a gift. She contended that save for the 20 acres, the Government never owned this land and could not subdivide it and allocate it to the plaintiffs. She sought a declaration that she is entitled to the whole land less the 20 acres surrendered to the Government by Mr. Bahadurali and for the eviction of the plaintiffs from the land.

On 24 March 2014, a group of 71 persons sought to be enjoined to this suit as interested parties as well. They claimed that the Government subdivided 377 acres into 5 acre plots which they sold to the plaintiffs and that they purchased these 5 acre lots from the allottees, thus they were the ones entitled to the land. Their application was allowed and they filed a replying affidavit.

The supporting affidavit to the present application is sworn by one Diamond Hasham Lalji. He has deposed inter alia that the whole land was purchased by Hasham Lalji Properties and the late Kimitei at the ratio of 60:40 respectively. It is said that the land was to be registered in his name in trust for the company jointly with the late Kimitei, but since he had to leave the country, the family agreed that the property be registered in the name of Bahadurali Hasham Lalji. He has stated that it has come to his notice that he purportedly transferred the company share to Bahadurali who then transferred a portion to the Government and the 1<sup>st</sup> plaintiff. He has contended that this was done through fraud as his signature was forged. He has further alleged that the transfer to Kimitei was done fraudulently. He thus wants all documents purportedly signed by Bahadurali and his brother Esmail, declared illegal and fraudulent.

I have considered the application. It will be seen that the applicant claims to own about 60% of the land and has refuted that the land was ever sold or surrendered to the Government or to the 1<sup>st</sup> plaintiff. It is also refuted that this share was ever sold to Kimitei. In essence, the applicant asserts ownership of a substantial chunk of the land in dispute.

In my view, if the suit is to continue without the input of the applicant, the applicant's claim over the suit property will not be heard. The alternative is to have the applicant file its own separate suit but I think it is best that all issues be canvassed in one case. I am therefore persuaded that it is necessary to have the applicant enjoined to this suit as interested party.

I allow this application and direct that the applicant be enjoined to this suit as interested party. I further permit the applicant to file its own statement of claim to the suit property within 14 days.

I make no orders as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 30<sup>TH</sup> NOVEMBER, 2018**

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT - ELDORET