



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 75 OF 2015

JOHN SALIMANAI OLOLMAITAI & OTHERS.....PLAINTIFFS

VERSUS

TELEPOSTA PENSION SCHEME.....DEFENDANT

Consolidated with

HCC NO 1338 OF 2006

AND

NAKURU ELC NO. 226 OF 2012

RULING

(Application to enjoin various persons as interested parties; plaintiff claiming possession of certain land from the defendants; defendants having a parallel title; the land in issue also having other persons with titles but such persons not enjoined in the suit; such persons to be enjoined in the suit as defendants and not interested parties so that the issue of who has a good title is resolved once).

1. The application before me is that dated 3 September 2018 filed by the plaintiff under the provisions inter alia of Order 1 Rule 8(1). That application was actually filed pursuant to the directions of this court. The background of the matter is that through a plaint filed on 20 May 2011 against Telposta Pension Scheme, the plaintiffs herein, six persons, claimed ownership of the land parcels Gilgil/Karunga Block 9/2370, 2367 and 2448 (Ol Burgel), and Plots No. 2, 3 and 5, in Ol Begi Centre, Gilgil. They claimed interference from the applicant who had put up a signpost that the said land is owned by the applicant. In the suit they asked that the applicant be permanently restrained from interfering with these parcels of land. The applicant filed defence and counterclaim, stating that what the plaintiffs are claiming form part of the land parcels Gilgil/Township Block 4/82 and 83.

2. The applicant had earlier filed suit in the year 2006, against 6 other persons, claiming that they have encroached into land owned by the applicant, identified as Gilgil/Township Block 4/82 and 83. The defendants on their part claimed that they are in lawful occupation of these parcels of land. The 1st and 4th defendants in the matter stated that they are the proprietors of the land parcels Gilgil/Karunga Block 9/2461 and 2459 (Ol-Burgel).

3. In a third suit, Nakuru ELC No. 153 of 2014, 10 persons, sued the applicant, claiming interference by the applicant of their parcels of land, identified as Plots NOs. 7, 14, 6, 16, 55, 23, 4, 20, 48, and 52, in Ol Begi centre in Gilgil.

4. The three suits were consolidated and I took in evidence from the applicants' witnesses including a surveyor. It did emerge from his evidence, that what the applicant claims to be Gilgil/Township Block 4/82 and 83 is also what the defendants claim to be land comprised in the map sheet Gilgil/Karunga Block 9. This Block 9, comprises of various other land parcels which were not identified in this litigation. It became clear to me that if I am to enter judgment for the applicant, and nullify what the defendants hold, then in essence I will be making a statement on the whole of the parcels contained in what is identified as Gilgil Karunga Block 9. I thus instructed counsel to consider advertising the suit to all persons who own titles bearing the registration Gilgil Karunga Block 9, and this application was filed.

5. In this application, the applicant has named the various persons owning plots within Gilgil Karunga Block 9 Ol Burgel and has applied that they be enjoined as interested parties. The application is not opposed.

6. On my part, I have considered the application. In as much as the applicant did not sue these persons, and from what I gathered, they were not sued because they are not interfering with possession, my own view, is that if the applicant wants to claim all the land held by these titles,

it is best that these persons be substantive defendants rather than interested parties. They need to be defendants because, in essence what the applicant wants is a nullification of the titles that they hold, and what the applicant wants is a declaration that its title is the good title. It is best that the litigation over what title between what the applicant has, and what the others have, be one that is litigated with these persons being substantive parties, in other words, defendants, rather than them being mere interested parties. That way, the court will make a one and final determination on the titles that they hold.

7. My holding and direction therefore is that these persons are necessary parties, and I direct that they be enjoined in this suit as substantive defendants. I further direct the applicant to amend its plaint, because to me the applicant is actually claiming the land comprised in the titles of the persons named in this application and that should come out clearly in the amended pleadings. The effect of this is that there will be a one off determination between the contested titles of the applicant and the other persons holding titles in Gilgil Karunga Block 9 (Ol Burgel) thus saving the court the need to hear any further dispute into the matter.

8. I thus direct the applicant to proceed as above.

9. I make no orders as to costs.

10. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 21st day of November 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Ikua present and holding brief for Mr. Mukira for the defendants .

No appearance on the part of M/s Bundotich & Co. for the plaintiff.

Mr. Ayub Njuguna acting in person- Present.

Court Assistants: Nelima Janepher

Carlton Toroitich.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU