

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 345 OF 2015

NAOMI CHEPCHUMBA ONGIRA.....PLAINTIFF

VERSUS

KIBOR ARAP BUSIENEI.....DEFENDANT

RULING

The plaintiff prays in the application dated 14th August, 2017 that leave be granted to enjoin the Nandi County Land Registrar and Nandi County Surveyor as the 2nd and 3rd defendants respectively and that the plaintiff be granted leave to amend the plaint. The application is based on grounds that the Land Registrar and Land Surveyor are crucial parties in this matter that the suit seeks to impugn actions of both the Nandi County Land Registrar and Nandi County Land Surveyor hence they cannot be condemned without hearing them.

The suit is seeking to challenge the process of subdivision of land parcel number NANDI/KIPSIGAK/690 into two portions being land parcels numbers NANDI/KIPSIGAK/1192 and NANDI/KIPSIGAK/1193. The suit is seeking to challenge the process of transfer and registration of the above- mentioned parcels of land in the name of the defendant herein. The suit is seeking to challenge the process of consolidation of land parcels numbers NANDI/KIPSIGAK/1192 and NANDI/KIPSIGAK/1193 into land parcel number NANDI/KIPSIGAK/1320.

According to the applicant, the statutory powers with respect of subdivision, transfer and consolidation of parcels of land within Nandi county in the Republic of Kenya are vested upon the County Land Registrar and the County Surveyor. The objective of the current suit is to revert back ownership of the subject parcel of land unto the Plaintiff which process will affect the exercise of the powers of County Land Registrar. The current suit will not be determined fairly without the participation of the County Land Registrar and the County Land Surveyor. The failure to enjoin the County Land Registrar and the County Surveyor was occasioned by an inadvertent mistake which is excusable.

In the replying affidavit of Elijah Momanyi Mogona, he states that to sue the proposed defendants would be superfluous and that the court can determine the dispute without enjoining the proposed defendants.

I have considered the application and the replying affidavit and do find that there are allegations of fraud on the part of the defendants and therefore, it is necessary to enjoin the Attorney General on behalf of the defendants. I do order that the County Land Registrar, County Surveyor and Honourable Attorney General to be enjoined as the 2nd, 3rd and 4th defendants respectively. The plaint to be amended accordingly.

Dated and delivered at Eldoret this 19th day of December, 2018.

A. OMBWAYO

JUDGE