



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 81 OF 2015**

KIPSOIMO KITUR.....1<sup>ST</sup> PLAINTIFF

KIPKETER MURWON.....2<sup>ND</sup> PLAINTIFF

RONALD SOME NG'ELECHEI..... 3<sup>RD</sup> PLAINTIFF

**VERSUS**

**JACOB KIBITOK BIRECH & 6 OTHERS.....DEFENDANTS**

**AND**

**PATROBA CHEMNGETICH KIMAIYO & 49 OTHERS...INTERESTED PARTIES**

**RULING**

1.The plaintiffs have brought an application dated 6/6/2016. They seek the following orders:-

(1) .....spent

(2) That there be interim orders of inhibition restraining the 5<sup>th</sup> defendant/respondent from registering all dealings including transfers, leases, mortgages and or charges in respect of those parcels of land ranging from registration numbers Kapomboi/Kapomboi Block 2/Mugeiyot/1-111 resulting from the subdivision of that parcel of land known as Land Reference No. 8417/1 (otherwise known as Mugeiyot Farm) within Trans-Nzoia County pending the hearing and determination of this application *interpartes*.

(3) THAT the name of Benjamin Kibiator Keter be and is hereby substituted as the 2<sup>nd</sup> plaintiff in place of Kipketer Murwon who is now deceased.

(4) THAT the plaintiffs/applicants be granted leave to serve the interested parties herein by way of advertisement in either the Daily Nation, the Standard or the Star Newspaper.

(5) THAT there be temporary orders of inhibition restraining the 5<sup>th</sup> defendant/respondent from registering all dealings including transfers, leases, mortgages and or charges in respect of those parcels of land ranging from registration numbers Kapomboi/Kapomboi Block 2/Mugeiyot/1-111 resulting from the subdivision of that parcel of land known as Land Reference No. 8417/1 (otherwise known as Mugeiyot Farm) within Trans-Nzoia County

**pending the hearing and determination of this suit.**

**(6) THAT costs of this application be in the cause.**

2. The plaintiffs' case is that they and others bought **Mugeiyot Farm** from a European Settler named Bedford as a group. This group comprised **18 members**. They raised **Kshs.70,000/=**. They borrowed **Kshs.90,000/=** from Agricultural Finance Corporation Ltd. The aggregate of these amounts was paid to Bedford who surrendered ownership to the 18 members. 8 other members joined this group thereafter. After this it was agreed that the A.F.C loan would be repaid by individual members who would keep their own receipts as proof of payments. The quantum of their shares would depend on these payments.

3. The plaintiffs aver that in the 1980s, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants and one Musa Talam (now deceased) arrogated themselves the responsibility of directors of the Farm and using their public positions entrenched themselves in the farm affairs, thus reducing the entitlements in terms of acreage of other members while unjustly increasing their own. This led to a series of disputes which were determined first, by a panel of elders chaired by the Saboti/Kwanza Division District Officer, a second panel of elders, the Senior Resident Magistrates Court, a third panel of elders (as ordered by the SRM) and finally by the High Court.

4. The plaintiffs aver that whilst the last proceedings before the High Court were pending, and whilst the stay granted in those proceedings was in force, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, in collusion with lands officers caused subdivision of the land subject matter herein and allocated themselves and their children large chunks of land at the expense of other members. The resultant titles after the subdivision range from registration numbers Kapomboi/Kapomboi Block 2 (Mugeiyot)/1-111 out of which 35 plots are still in the name of Government of Kenya.

5. The plaintiffs aver that the surrender of the head title for LR.8417/1 (Mugeiyot Farm) and the subsequent subdivision and issuance of individual titles was utterly irregular, illegal, malicious and fraudulent. Particulars of fraud, illegality and malice on the part of the 1<sup>st</sup> – 6<sup>th</sup> defendants have been set out at paragraph 23 of the plaint as required by law. As a result of those acts of the defendants, the plaintiffs plead, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and their families have now been dispossessed of their entitlement in terms of acreage while the 3<sup>rd</sup> plaintiff has been totally dispossessed of his land and is living in a different parcel altogether despite his membership at the Farm.

6. The plaintiffs aver that in view of the illegal allocation of the plot that hosts the farm house, the same should be revoked and reallocated amongst the 18 original members in proportion to their respective shares. They also pray for cancellation of all the title deeds issued in respect of the resultant subdivision of LR. No. 8417/1 and a declaration that the surrender of the head title for LR. 8417 and the resultant subdivision and issuance of individual titles was illegal in view of the stay orders issued by the **Kitale High Court in Miscellaneous Civil Application No. 22 of 1997 on 25<sup>th</sup> June, 1997** which remained in force until **19<sup>th</sup> February, 2015**. They also seek costs of the proceedings.

7. Some of the matters in the plaint are admitted by the 1<sup>st</sup>- 4<sup>th</sup> defendants. However it remains a matter that is deeply disputed between the parties as to whether the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were duly mandated by members of the Mugeiyot Farm, whether the plaintiffs participated in the process of subdivision, whether the 3<sup>rd</sup> plaintiff was a member of Mugeiyot Farm, whether the original title was ever surrendered to the Government to enable subdivision, whether this suit is *res judicata*, whether the subdivision and issuance of titles was regularly legally done and with the consent of members of Mugeiyot Farm, whether the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and their families have been dispossessed of their entitlement, and whether persons who got shares in the farm got what was rightfully theirs. These are just some of the main issues arising from the pleadings in this matter and they are not frivolous. They will be determined by way of consideration of evidence to be adduced at the main hearing of the suit and not at this interlocutory stage. Contents of letters from the Agricultural Finance Corporation which are attached to the supporting affidavit, addressed to Ms. Kogo J.K.A & Partners, J.K. Kogo & Partners, Ms.

Kipsoimo Kitur & Others, are evidence that the plaintiffs may have a claim with probabilities of success. So does the Land Control Board Consent dated 19/11/1973 in the name of Joshua Kiberenge and two others, the letter from the Chief Land Registrar dated 11/4/2001, and titles issued on various dates between 1997 and 2013.

**8.** In this court's view the defence filed by the 1<sup>st</sup> - 4<sup>th</sup> defendants on 14/1/2016 and that filed by the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants on 7/4/2014 do not answer the plaintiff's claim sufficiently so as to dispel the said issues. For that reason this court finds that the plaintiffs have established that they have a prima facie case with probability of success.

**9.** The plaintiffs' counsel urges that unless the plaintiffs are granted the orders sought, they will suffer enormous loss and damage. It is said that the 3<sup>rd</sup> defendant has no land to use as he has been dispossessed by the fraudulent acts of the defendants. Further, any transactions that may occur in respect of the suitland would complicate the issues by placing land in the hands of innocent third parties.

**10.** I agree with the plaintiffs' position. It would be necessary for the defendants to demonstrate at the hearing as to why the 3<sup>rd</sup> plaintiff is said to be not entitled to land, or why the acreage claimed by the other plaintiffs had to be reduced, and why children of the defendants being born in the latter days long after the land was acquired, were entitled to any land beyond what their parents entitlement to land in the Farm if the farm land had been distributed in the proper manner. It is the acts of the defendants that are said to have caused the plaintiffs' woes.

**11.** I do therefore find that if the orders are not granted, the dissipation of the property into innocent third party hands may render the dispute even more difficult to handle. There would be need to establish where the 3<sup>rd</sup> plaintiff's land, if he were entitled to any, can be found for his benefit, lest he being otherwise possibly so entitled, be unable to recover it forever.

**12.** Where the court may stem the tide of transfers to third parties which transfers would otherwise complicate the dispute it would not be proper for the court to decline to grant orders of injunction to preserve the subject matter of the suit if an applicant has already demonstrated that he has a prima facie case with a good probability of success. This court therefore finds that the plaintiffs may suffer irreparable damage if the orders sought are not granted.

**13.** As regards substitution of Benjamin Kibiator Keter for Kipketer Murwon (deceased) I find no challenge raised by the defendants and the represented interested parties.

**14.** Also, in respect of prayer No. 4 seeking leave for service upon the interested parties, there is no challenge, and indeed I find from the record that such orders had been issued earlier on 28/1/2016 in the application dated 4/11/2015, which was later withdrawn on 21/4/2016.

**15.** The upshot of the above is that I find that the plaintiffs' application dated **6<sup>th</sup> June, 2016** has merit and I grant prayers **Nos. 3, 4 and 5** sought therein. The costs of the application shall be in the cause.

Signed, dated and delivered at Kitale on this **30<sup>th</sup>** day of **May, 2017**.

**MWANGI NJOROGE**

**JUDGE**

**30/05/2017**

Before – Mwangi Njoroge Judge

Court Assistant – Isabellah

N/A for the parties

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**30/05/2017**