



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 94 OF 2016

JACKSON KIPROTICH KIBOR.....PLAINTIFF

VERSUS

KIPRUTO ARAP LELEI.....1ST DEFENDANT

SAMUEL KIPRONO SOMOEI.....2ND DEFENDANT

TANGUAR ARAP SUGE.....3RD DEFENDANT

SEREI ARAP LEL NENGIT.....4TH DEFENDANT

CHELULE KEINO.....5TH DEFENDANT

WESLEY KIMELI SAMBAI.....6TH DEFENDANT

WILSON KIPKERING KOGO.....7TH DEFENDANT

KIPROTICH ARAP KIBIWOTT.....8TH DEFENDANT

GEDION KIPRUTO CHEMIRON.....9TH DEFENDANT

THE ATTORNEY GENERAL.....10TH DEFENDANT

ELKANA KIPLETING KIBOR.....11TH DEFENDANT

EVANS KIPKOSGEI KIBOR.....12TH DEFENDANT

EZEKIEL KIPNG'ETICH KIBOR.....13TH DEFENDANT

ERICK KIPCHUMBA KIBOR.....14TH DEFENDANT

RAYMOND KIBITOK KIBOR.....15TH DEFENDANT

KESENCHÉ "B".....16TH DEFENDANT

KESENCHÉ "A".....17TH DEFENDANT

EDWIN KIPKOECH KIBOR.....18TH DEFENDANT

THE CHIEF LAND REGISTRAR.....19TH DEFENDANT

UASIN GISHU COUNTY.....20TH DEFENDANT

RULING

The application before court is dated 24th day of April, 2017. The applicant prays for leave to reopen his case and to adduce additional evidence and produce as exhibits aspects that are vital and fundamental to his case and helpful to the court's cause of justice. He prays that he be cross examined by all parties and participants at their liberty on the new evidence and exhibits. The application is based on grounds that he requires to adduce evidence in respect of the searches on the parcels of land claimed by the 1st to 9th and 11th to 18th defendants, which searches he claims to be very relevant to his case. He also seeks to produce the premised title. He further states that the 10th, 19th and 20th defendants have not made their statements making it difficult for the plaintiff to place their case in picture.

Elkana Kipleting Kibor, the 11th defendant filed a replying affidavit on his behalf and on behalf of the 12th and 14th defendants. He argues that the documents sought to be produced were filed as the list of documents hence there is no need for reinduction. He states that the plaintiff disowned the documents and therefore, he should not be allowed to approbate and reprobate.

The application was opposed by the 11th, 12th and 14th defendants. The rest did not oppose.

The gravamen of submissions by Mr. Songok, learned counsel for the plaintiff is that the plaintiff contemplated that the defendants would put in some documents which are very important, however, the plaintiff has come to realize that the defendants are not likely to put in the said documents which will assist the court to make an informal decision.

M/s Adhiambo, learned counsel for 11th, 12th and 14th defendants argue that the application is an abuse of court process as this is the second time the applicant is seeking to re-open the case. She argues that there are no valid reasons why the documents were not produced.

I have considered the application and the rival submissions and do find that this court has unfettered discretion to either allow or disallow the re-opening of a case. It should consider the issue in the interest of justice and it is important for the court to make an informed decision. The court should in any event not deny a party from the seat of justice and the only way a party can approach the seat of justice is by presenting evidence. The court should also consider the issue of prejudice, thus the order for re-opening should not be prejudiced to the other parties. I have considered the replying affidavit and do find that the 11th, 12th and 14th defendants have not demonstrated to this court how re-opening of the plaintiff case would prejudice the defendants' case.

However, I do find that the evidence sought to be adduced will be adduced by the Chief Land Registrar and the County Land Registrar and therefore, it is not necessary to re-open the plaintiff's case. This court has the power to call the Chief Land Registrar and the County Land Registrar to produce all documents in their possession in respect of the suit herein. I do order that the case proceeds with defence hearing.

DATED AND DELIVERED AT ELDORET THIS 22ND DAY OF SEPTEMBER, 2017.

A. OMBWAYO

JUDGE