



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT OF KENYA**

**AT MILIMANI**

**ELC CASE NO. 441 OF 2014**

**KIMANI KAMAU AND 4 OTHERS.....PLAINTIFFS**

**ANTONNEY NGATIA NDUNGU.....INTENDED 6<sup>TH</sup> PLAINTIFF**

**PETER KAHURE NDIRITU.....INTENDED 7<sup>TH</sup> PLAINTIFF**

**=VERSUS=**

**SAITOTI OLE MOSIRO.....1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR,KAJIADO NORTH DISTRICT...2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....3<sup>RD</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of three applications. The first one is dated 9<sup>th</sup> April 2014, brought by the five plaintiff/applicants against Saitoti Ole Mosiro, the Land Registrar Kajiado, Chief Land Registrar and the Attorney Generals as first, second, third and fourth respondents respectively. The application seeks injunctive orders against the respondents restraining them from dealing with LR Nos Ngong/ Ngong/17958, 14734, 18205,41344 and 17193 belonging to the first ,second, third, fourth and fifth plaintiff /applicants respectively.

2. The second application is dated 19<sup>th</sup> June 2015 brought by the first defendant in this suit. The application seeks an order of inhibition inhibiting any dealings in respect of LR Nos. Ngong/ Ngong/67130, 67131, 67132, and 67233. The applicant in this application also seeks orders of committal to civil jail against the second plaintiff and the second defendant in this case for contempt of a court order .

3. The third application is dated 1<sup>st</sup> November 2016, brought by two applicants who are seeking to be enjoined in this suit as sixth and seventh Plaintiffs. The applicants are also seeking a permanent injunction restraining the defendants from interfering with LR Nos. Ngong/ Ngong/67130, 67131 and 67133. The applicants are further seeking orders excluding LR Nos. Ngong/ Ngong/67130, 67131 and 67133 from the consent entered between the plaintiffs and the defendants in this case. The applicant who seeks to be enjoined in this suit as a sixth plaintiff is owner of LR. Nos. Ngong/ Ngong/ 67130,and 67133, whereas

the one seeking to be enjoined as the 7<sup>th</sup> plaintiff is owner of Ngong/ Ngong/ 67131.

4. From the documents filed in this suit, the first defendant is the one who sold land first ,second and fifth plaintiffs. The third and fourth plaintiffs bought theirs from the second plaintiff who had purchased those parcels from the first defendant. The second plaintiff had also purchased LR. Nos. Ngong/ Ngong 17957 from the first defendant. The second plaintiff subdivided LR. Nos. Ngong/ Ngong/17957 which resulted into four portions. Three of the four portions are now held by the proposed sixth and seventh plaintiffs.

5. When the plaintiff's filed this suit, the subdivisions resulting from LR No.Ngong/Ngong/17957 were not part of the suit parcels in contention. The present suit had been triggered by the first defendant's complaint to the second defendant over a boundary dispute. It appears the Land Registrar visited the parcels in dispute and a determination was made. This determination did not augur well with the plaintiffs whose parcels were going to be affected. This is because the first defendant was contending that there was no proper measurement of the portions he sold in the 1990's. His contention is that the land he sold is more than what it ought to have been.

6. The first defendant's application is premised on the fact that LR No.Ngong/ Ngong/17957 which he had sold to the second plaintiff and which has now been subdivided shared a boundary with his land and should therefore have been made a subject of the present suit. This is why he now wants orders inhibiting any dealings in the resultant sub-divisions.

7. On the issue of contempt of court on the part of the second plaintiff and second defendant, the first defendant contends that the two are in contempt of a court order which resulted from a consent dated 26<sup>th</sup> March 2015 and filed in court on 31<sup>st</sup> March 2015. In that consent which was later adopted as order of the court on 6<sup>th</sup> May 2015, the plaintiffs in this suit and the defendants agreed to maintain the status quo on the properties. The status quo was defined to mean that neither party was to sell, offer for sale, and interfere with boundaries to the properties or otherwise deal with the property either by themselves, employees, agents or persons acting on their behalf pending the hearing and determination of the Notice of Motion dated 9<sup>th</sup> April 2014.

8. I will first deal with the application dated 19<sup>th</sup> June 2015. The first defendant is seeking to have the second plaintiff and the Land Registrar Kajiado who is the second defendant punished for contempt of Court. The first defendant blames the two for going ahead with sub-division of LR Ngong/Ngong/17957 and creating new titles thereof in contravention of the consent order. It is important to note that parcel No.Ngong/ Ngong/17957 was not part of the suit where a consent was recorded. This parcel had already been sub-divided and title closed on sub-division. The new titles came out on 6<sup>th</sup> February 2015 more than a month before the consent was recorded. The second plaintiff and the second defendant cannot therefore be accused of being in contempt of an order when the suit properties were not affected by the consent.

9. On the issue of inhibition orders, I do not see any basis of granting orders to inhibit any dealings on LR Nos. Ngong/ Ngong/ 67130, 67131, 67132 and 67233. There is no evidence that any of the four parcels border his property as to be a subject of a boundary dispute. If the documents filed herein are anything to go by, the first defendant's claim is not a boundary dispute but rather a claim for land. His contention is that when survey was done, the plaintiffs and the owners of the parcels which are sought to be inhibited were given more land. He now wants to reclaim that land 22 years after he sold the same. The first defendant does not have any counter-claim in this suit. I find that the first defendant's Notice of Motion dated 19<sup>th</sup> June 2015 is misconceived. The same is hereby dismissed with costs to the respondents.

10. I now turn to the application dated 1<sup>st</sup> November 2016. The applicants who seek to come into this suit as sixth and seventh plaintiffs contend that the first defendant had caused cautions to be registered against titles to their properties. They went and negotiated with the first defendant who agreed to remove the cautions. Consents to that effect were signed but could not be registered by the Land Registrar Kajiado who thought that the same had been put in place as a result of a court order. However when the Land Registrar sought clarification from the court, it turned out that the cautioned properties were neither

affected by interim orders of injunction granted by the Court nor by the consent order maintaining the status quo. The cautions were therefore removed.

11. The applicants in this application are seeking to bar the respondents permanently from interfering with their three properties. They also seek exclusion of their properties from the consent which was dated 26.3.2015 and filed in court on 31.3.2015. I have said hereinabove that none of the applicants' properties were a subject of the consent dated 26<sup>th</sup> March 2015. One cannot seek to exclude a property or properties from a consent where those properties have not been a subject.

12. On the issue of joinder, I find that the two applicants need to be enjoined in the suit as their presence is necessary so as to avoid a multiplicity of suits. Already the first defendant had indicated that the mother title before sub-division bordered his parcel and ought to have been included in the suit. It is necessary that the two applicants are allowed into the suit as plaintiffs to take care of their interests.

13. The applicants are seeking a permanent injunction at interlocutory stage. This is not allowed and I will therefore not allow that prayer. I therefore allow the applicants' motion dated 1<sup>st</sup> November 2016 to the extent that the two are allowed to come in as plaintiffs in this suit. An amended plaint shall be filed within 14 days from the date of this ruling incorporating them as plaintiffs.

14. The last application to be considered is dated 9<sup>th</sup> April 2014. The applicants are seeking injunctive orders against the respondents. The ground for this is that when the District Land Registrar went to the ground, they were not present. That they were shocked to see a report which was prepared by the District Land Registrar. The applicants further contend that the surveyor who conducted the survey carried out measurements up to the riverbank in an attempt to extend the first respondent's land. There is no averment that there has been any attempt to implement the findings of the surveyor. It is also ironical for the applicants' to claim that they were not present during the survey, yet they claim that the measurements were taken up to the river bank. I find no merit in the Notice of Motion dated 9<sup>th</sup> April 2014 which is hereby dismissed with costs to the respondents.

15. The final orders made in respect of the three applications are as follows:-

***a. Application dated 9<sup>th</sup> April 2014 is dismissed with costs to the respondents.***

***b. Application dated 19<sup>th</sup> June 2015 is dismissed with costs to the respondents.***

***c. The application dated 1<sup>st</sup> November 2016 is allowed to the extent that the proposed 6<sup>th</sup> and 7<sup>th</sup> plaintiffs are allowed to come into the suit as plaintiffs. An amended Plaint incorporating them to be filed within 14 days from the date of this ruling. Costs of this application to be costs in the cause.***

***d. This file is hereby transferred to Kajiado Environment and Land Court for hearing as the suit property falls within the jurisdiction of that court.***

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this 23<sup>rd</sup> day of **October, 2017**.

**E.O.OBAGA**

**JUDGE**

In the presence of;-

Mr Ondari for Mr Osiemo for Plaintiffs

Court Assistant: Steve

**E.O.OBAGA**

**JUDGE**