



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**HCC NO. 146 OF 1989**

**STANLEY K. CHEMNGOREM.....PLAINTIFF**

**VERSUS**

**FRANCIS K MIBEI.....1<sup>ST</sup> DEFENDANT**

**KIROBON FARMERS CO. LTD.....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application for joinder as interested parties; application not opposed; clear interest shown by the applicants; application allowed)***

1. The application before me is that dated 19 September 2014 filed by 7 persons who want to be enjoined to this suit as interested parties. The application is founded upon Order 1 Rules 10 and 25 and Order 22 Rule 22 of the Civil Procedure Rules, 2010. Alongside the application for joinder, the applicants also want orders of stay of execution of the decree/judgment herein.

2. This is a fairly old matter that was commenced by way of plaint on 16 May 1989. In the suit, the plaintiff, Stanley Chemngorem, sued Kirobon Farmers Company Limited and Francis Mibei (now deceased). His case was that through balloting, the 1st defendant allocated him the Plot Numbers 186 and 195 (new numbers 170 and 188). He layed out the land, fenced and paddocked it. He also constructed a house and a cattle shed. It was his case that the 1st defendant later purported to allocate the land parcel No. 188 to the 2nd defendant and that the 2nd defendant also made further encroachment into the land parcel No. 170 and had occupied about 2.5 acres of it at the time of filing suit.

3. In his Statement of Defence, the 2nd defendant pleaded that he was properly allocated the land parcel No. 188 but has no interest in the land parcel No. 170. The two parcels became registered as land parcels Njoro/Ngata Block 2/188 and Njoro/Ngata Block 2/170. He pleaded that he is the first registered proprietor of the former parcel of land.

4. On 4 November 1996, by consent of the parties, the matter was referred to an Arbitration panel of elders to be chaired by the District Officer, Rongai Division. Each party was to select two elders to sit in the panel. The award was filed and on 30 September 1997 the parties were given 30 days to file any objections. It does not appear that any objection was filed.

5. On 11 March 1998, the parties recorded a consent that a surveyor, Mr. Werugia, do survey the land and allocate to the 1st defendant 18.5 acres. The consent went further to state that the rest of the acreage go to

the plaintiff. From that day the matter was next mentioned on 13 July 1998, then 28 September 1998 and the matter went quiet until 22 October 2012 when the plaintiff filed an application seeking to have the OCS Rongai ordered to provide security to Mr. Werugia. Another application was filed on 11 June 2014 by the plaintiff asking that the decree be amended to read Njoro Ngata Block 2/ 3524, 3818-3828 in the name of the defendant. Those two applications have never really been disposed of. It is then that this application was filed on 22 September 2014.

6. In the supporting affidavit to the application, it is deposed that the 1st defendant died on 6 March 2005 and a Certificate of Death is annexed. The deponent, Rachel Mibei, who is one of the applicants has stated that she is the wife of the deceased. The other applicants are the children of the deceased. She has deposed that she obtained a Grant of Letters of Administration to the estate of the late Mr. Mibei on 23 May 2006 and the estate of the deceased was distributed. The suit property was subdivided and new titles being Njoro Ngata Block 2/ 3518 - 3524 were issued to the applicants. It is their view that the judgment is time barred. They wish to be enjoined to these proceedings since they are now the proprietors of the subdivided parcels of land.

7. Mr. Kimatta for the plaintiff did not oppose the application.

8. On my part, I see no reason why I should not allow it. Clearly, the applicants have an interest in the matter at hand as they possess titles to the subdivisions of the suit property. They may have something to say as the plaintiff has applied to have the decree amended so as to reflect their titles.

9. I therefore allow this application. The applicants are hereby enjoined as interested parties to this suit. They are also at liberty to file any application they so wish or reply to any application filed by the plaintiff. I make no orders as to costs.

10. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 16<sup>th</sup> day of March , 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :-**

Mr. Nyamwange for applicants.

Mr Mutonyi holding brief for Mr. Kimatta for plaintiff

N/A for defendant

Court Assistant : Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**