



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

HCC NO. 219 OF 2011

MERIN OLE TUYOTO & 124 OTHERS.....PLAINTIFFS

VERSUS

THE CHAIRMAN LIMANET GROUP RANCH COMMITTEE.....1ST DEFENDANT

DISTRICT LAND REGISTRAR.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

DANSON RIKANA SANOE.....4TH DEFENDANT

RULING

(Application to stay a civil and criminal case pending in the Magistrates Court pending finalization of this suit; this suit having been filed by 125 persons claiming certain land previously in a Group Ranch; plaintiffs claiming that the subdivision of the Group Ranch was improperly done; the accused in the criminal case sought to be stayed and defendant in the civil suit not being a party to this case and not being the applicant; no locus for the plaintiffs to file the application to stop her prosecution or to stop the civil suit against her from proceeding; application dismissed with costs)

[1] The application before me is that dated 19 May 2015 filed by the plaintiff. The application is brought pursuant to the provisions of Sections 6, 3, 3A of the Civil Procedure Act and Order 51 of the Civil Procedure Rules and all enabling provisions of the law. The principal order sought is for stay of proceedings in *Narok SPM Criminal Case NO. 627 of 2015 R vs Ntetia Masikonde* and *Narok CMCC No. 89 of 2015 between Danson Rikan Sanoe vs Ntetia Masikonde*.

[2] A little background will shed light as to why the plaintiff seeks the above order.

[3] The plaintiffs in this suit are 125 persons and they commenced this case on 23 September 2011. They pleaded that they are the registered members of Limanet Group Ranch and beneficial owners of the land parcel Cis-Mara/Ilmashariani Morijo/48. They contend that in the year 2008 the Committee of the Limanet Group Ranch in collusion with the 2nd defendant, the District Land Registrar, Narok, fraudulently issued title deeds to strangers who are not members of the Group Ranch. In this suit, they have asked for orders inter alia that all title deeds issued in respect of Cis Mara/Ilmashariani Morijo/48 be cancelled. A defence was filed by the 1st defendant vide which the claims of the plaintiffs were refuted. Although a memorandum of appearance was filed on behalf of the Attorney General, no defence has been filed on behalf of the 2nd to 4th defendants.

[4] Thereafter, an application dated 21 October 2011 was filed. It sought orders to stop two cases, that is Narok CMCC No. 141 of 2009 and Narok Criminal Case No. 590 of 2011. A related application dated 23 January 2012 was filed by three persons who were the complainants in Narok Criminal Case No. 590 of 2011 and the plaintiffs in Narok CMCC No. 141 of 2009. They sought to be enjoined as defendants or interested parties to this suit. This application of 23 January 2012 was allowed by consent and the applicants ordered to be defendants in this case. They are now the 5th, 6th and 7th defendants. They proceeded to file a defence to the plaintiffs' case and a counterclaim. The application of 21 October 2011 was also allowed by consent on 14 May 2013. Another application dated 1 October 2012 was filed also seeking stay of another criminal case in Narok Magistrate's Court, being Narok Criminal Case No. 1205 of 2012. Some interim orders seeking stay of this case were granted but it appears as if that application has been forgotten since it has never been prosecuted. It is then that this application was filed now seeking stay of the two cases mentioned at the beginning of this ruling.

[5] Apparently prompted by this application, one Danson Rikana Sanoe, the plaintiff in the civil suit sought to be stayed and complainant in the criminal case sought to be stayed, filed an application on 7 July 2015 seeking to be enjoined to these proceedings as interested party. That application was allowed by consent on the same day.

[6] The supporting affidavit to this motion has been sworn by Merin Ole Tuyoto, the 1st plaintiff. He has deposed inter alia that in this case, the plaintiffs seek cancellation of all title deeds issued to strangers who were not members of Limanet Group Ranch. He had deposed that Ntetia Masikonde, the accused in Narok Criminal Case No. 627 of 2015, is one of their members. She is also the defendant in Narok CMCC No. 89 of 2015. He has deposed that she has been charged with the offence of forcible detainer of the land parcel Cis Mara/ Ilmashariani Morijo/1239 which was carved out of the land parcel No. 48. It is averred that the owner of the land parcel No. 1239, Danson Rikana Sanoe, was never a member of the Limanet Group Ranch and therefore his title is fraudulent and illegal. It is averred that if the two suits are not stayed, they stand to suffer irreparable loss.

[7] The 1st defendant has opposed the application to stay the two cases and has filed a replying affidavit and a Notice of Preliminary Objection. In his replying affidavit, he has inter alia deposed that the accused person in Narok Criminal Case No. 627 of 2015, who is also defendant in Narok CMCC No. 87 of 2015, Ntetia Masikonde, is not among the plaintiffs in this suit and is not a party in this suit. He has deposed that the father to Ntetia, one Kiringai Ole Kiriamuny, was allocated a parcel No. Cis Mara/Ilmashariani/Morijo/1269 which is different and distinct from the land parcel Cis Mara/Ilmariashani Morijo/1239 which is in the name of Danson Rikana Ole Sanoe. He has deposed that the land parcel Cis Mara/Ilmashariani Morijo/48 was long subdivided and persons now have their individual title deeds. He deposed that the subdivision was done above board. It is also averred that the applicant ought to have moved the court to quash the proceedings of the cases pending in the Magistrates Court by use of the provisions of Order 53 of the Civil Procedure Rules, which provide for Judicial Review applications.

[8] The plaintiffs filed a further affidavit sworn by Merin Ole Tuyoto. He has inter alia faulted the manner in which the original land was subdivided. He has also asserted that Ntetia Masikonde was entitled to land that was owned by her father who is now deceased.

[9] Ms. Kipruto for the applicant inter alia submitted that stay of the two cases is sought since the subject matter in those cases is the same as the subject matter herein. Mr. Chomba holding brief for Mr. Kamwaro for the 1st respondent, stressed that the parties in the cases in Narok are not parties in this suit.

[10] I have considered the application. It of course seeks stay of two cases, one civil and one criminal, which are pending before the subordinate court in Narok. Before I go to the merits of it, I do not see any substance in the argument by the respondent that the only avenue available is to file a judicial review motion. A superior court has power in its supervisory capacity to order stay or even the striking out of a matter pending before a subordinate court. I do not think that the only route is a judicial review proceeding although this path is also open to any party.

[11] On the merits of the application, I do note that Ntetia Masikonde, the accused in Narok Criminal

Case No. 89 of 2015 and defendant in Narok CMCC No. 89 of 2015, is not a party in this case. She has not presented any claim that she is entitled to any land that was originally comprised in the land parcel Cis Mara/Ilmashariani Moriyo/48. Neither is she a defendant in this case. She is a complete stranger to the proceedings herein. She is not even the one who has filed this application, which application has been filed by the plaintiffs herein. She has not sworn any affidavit in support of the application. In other words, she herself has not raised any objection to the two cases in the Magistrates' court proceeding. I do not see what locus standi the plaintiffs have to attempt to stop her prosecution or the civil suit against her pending in Narok.

[12] The plaintiffs here attempt to state that she is a beneficiary of the Group Ranch. Those are their views. Ntetia has not said so in this suit and neither has she has asked to be enjoined in this suit. Why then should I stop her prosecution in the criminal case in Narok and why should I stop the civil suit against her ? I really do not see any basis for doing so. I do not find any merit in this application and the same is dismissed with costs.

[13] The interim stay orders that were granted pending hearing of this application are hereby vacated.

[14] It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21st day of September 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Ms. Kipruto holding brief for Mrs Ndeda for plaintiffs/applicants

No appearance on part of the respondents.

Court assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU