



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

LAND CASE NO.230 OF 2014

JAMES ABOKA ALOYO.....PLAINTIFF

VERSUS

LUCAS OCHIENG NYANDONDO.....1ST DEFENDANT

JAMES KIRUNDA2ND DEFENDANT

JOSEPH ODERA.....3RD DEFENDANT

DISTRICT LAND REGISTRAR, KISUMU.....4TH DEFENDANT

PAUL AMUGA T/A AMUGA & CO. ADVOCATES.....5TH DEFENDANT

RULING

[1] Through the notice of motion dated 4TH December 2015, **James Aboka Aloyo**, the Plaintiff, seeks to have **Kenya Pipeline Company Limited** to be enjoined as the 6th Defendant. The application is based on four grounds on its face among them that the Plaintiff and the 2nd Defendant have contented that they bought the suit land from the said **Kenya Pipeline company Limited**.

[2] The application his opposed by Lucas **Ochieng Nyandondo**, the 1st Defendant, through his replying affidavit sworn on 31st March 2016.

[3] The application came up for hearing on 11th April 2016. The counsel for 2nd, 3rd and 5th Defendants informed the court that they were not opposing the application. The counsel for the 1st Defendant suggested that the application be dealt with though written submission. The application was rescheduled to 5th May 2016 to enable counsel for the Plaintiff serve the 4th Defendant's counsel with the application. When the counsel for the parties appeared before the court on 5th May 2016, the counsel for the 4th Defendant indicated that they are not opposing the application. The application was then rescheduled for 31st May 2016 when directions on filing written submissions were given. The court then fixed the matter for mention on 30th June 2016 to confirm the filing of the submissions.

[4] That the Plaintiff counsel filed their written submissions dated 10th June 2016 and served the counsel for the 1st Defendant on the same date. When the matter came up for mention on 30th June 2016, the 1st Defendant's counsel requested to be given up to Monday the 4th June 2016 to have their written submissions filed.. Their request was accepted but the counsel has not filed any submission by the time the court was preparing this ruling.

[5] The following are the issues for the court's determination;

- (a) Whether the Plaintiff has established reasonable grounds for the Kenya Pipeline company Limited to be enjoined in these proceedings.
- (b) Who pays the costs.

[6] The court has carefully considered the grounds on the notice of motion, the affidavit evidence by Plaintiff and 1st Defendant, the submissions by the counsel for the Plaintiff, the pleadings so far filed by the parties and come to the following conclusions;

(a) That from the averments in paragraphs 7 to 12, and 15 of the plaint dated 2nd July 2014, paragraphs 6, 22 and 24 of the 1st Defendant's statement of defence dated 2nd September 2014, paragraph 3(a)(b), and 6 of the 5th Defendant's statement of defence dated 28th April 2015, it is apparent that the **Kenya Pipeline company Limited** were the original owners of the suit land and their participation in these proceedings is important to help confirm to the court in whose favour they executed the transfer documents of the suit land to.

(b) That in accordance with **Order 1 rule 10(2)** of the Civil Procedure Rules, the court is satisfied that the Kenya Pipeline company Limited inclusion in this suit will enable the court to effectually and completely adjudicate upon and settle the questions of the competing claims of the parties over the suit land.

(c) That the contention by the 1st Defendant that the inclusion of **Kenya Pipeline Company Limited** will delay the finalization of the suit has no factual basis. That to the contrary, the inclusion will help the court to determine whether **the Kenya Pipeline Company Limited** had indeed sold the property and signed the transfer documents of the suit land in favour of the Plaintiff or the 2nd Defendant from whom the 1st Defendant traces his title to.

[7] That from the foregoing, the Plaintiff's notice of motion dated 4th December 2015 has merit and is allowed in the following terms;

(a) That prayer 1 of the notice of motion dated 4th December 2015 is allowed and the Kenya Pipeline Company Limited is herein enjoined as the 6th Defendant.

(b) That in accordance with **Order 1 Rule 10(4)** of the Civil Procedure Rules, the Plaintiff do file and serve an amended plaint, reflecting the inclusion of the Kenya Pipeline Company Limited as the 6th Defendant to all the Defendants within the next 21 days.

(c) The costs of the notice of motion be in the cause.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 5TH DAY OF OCTOBER 2016.

In presence of;

Plaintiff Absent

Defendants Absent

Counsel Mr Odeny for Plaintiff/Applicant

M/S Lagat for 4th Defendant/Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

5/10/2016

5/10/2016

S.M. Kibunja J.

Parties absent

Mr Odeny for Plaintiff/Applicant

M/s Lagat for 4th Defendant/Respondent

Court: Ruling dated and delivered in open court in presence of Mr Odeny and Langat for Plaintiff/Applicant and 4th Defendant/Respondent respectively.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

5/10/2016