



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 26 OF 2013

LAZARUS KERICH.....PLAINTIFF

VERSUS

KISORIO ARAP BARNO.....DEFENDANT

AND

ROBERT KAPTICH.....1ST INTERESTED PARTY

PETER KOSGEY.....2ND INTERESTED PARTY

PETER BAYWO.....3RD INTERESTED PARTY

WILLIAM SUGUT.....4TH INTERESTED PARTY

RULING

Robert Kaptich, Peter Kosgey, Peter Baywo and William Sugut have come to this court applying to be enjoined in this matter as interested parties and that there be a stay of the enforcement of the order made on 18.3.2016 pending the determination of the application inter-partes. The application is based on grounds that the applicants are interested as co-owners of the suit parcel and therefore, the outcome of this case will affect them adversely. That if the intended suing is not stopped, they will be affected as the original shareholders of the land.

In the supporting affidavits of Peter Kosgey, Robert Kaptich, Peter Baywo, William Sugut, it is alleged that the suit land herein belongs to the Asururiet Farm Ltd and it is alleged that issues in the order issued on 18.3.2016 will collide with the interest and position on the ground. Ngigi Mbugua for defendant has filed grounds of opposition thus:

- 1. That the application is misconceived, vexatious, bad in law and an abuse of due process of the law.***
- 2. That the orders sought by the applicants are not available to them as the suit has final orders and judgment and not an interlocutory judgment.***
- 3. That a final judgment cannot be stayed by an application of setting aside.***
- 4. That the applicants have no locus standi.***
- 5. That the applicants' names are not on any lists.***

6. That the court is already functus officio and cannot vary the judgment and set it aside under order 10.

7. That if the applicants' names are non the lists, what are they claiming and the list is the judgment.

John Kurgat has filed a replying affidavit whose import is that the applicants have not demonstrated what is objectionable in the survey exercise.

Paul Serem, the Secretary of the Committee of Asururiet Farm states that the judgment of the court made on 18th Marc, 2016 was arrived at after the Committee of the farm had provided the court with an up-to-date list of the members of the farm which shows 282 plots. He produced documents marked PS1 showing the list co-signed by Robert Kaptich who is the Vice-Chairman of the Farm Committee and is the 1st Applicant herein. The said list, Robert Kaptich is listed at No. 11 together with his father Kaptich Koech as owning 9.5 acres as 21.6 acres had been sold to the late John Kenduywa by Kaptich Koech. That in the said list, Peter Baywo who is also a Committee Member is listed at No. 13 as having 21.1 acres having inherited the same from his late father Chemei Baiywo. That again in the said list, Peter Kosgei who is also a committee member his interest is contained in No. 18 as his late father Kipkosgei Cheruiyot and Kisorio Barno own 77.3 acres which on their own they will find their own way of subdividing their entitlements. That finally, William Sugut in the said lits, his interest is contained in No. 253 which indicates he owns 8.7 acres from the interest from Maloson Maritim. That from the foregoing, it is very clear each of the applicant's interests have been catered for and they fully participated in the process leading to the entry of judgment and later the formulation of the court order. That what the surveyors are doing on the ground is to actualize the sentiments of this court's order and if a stay is now given at this stage, what then will follow will be a total confusion which is likely to. That the documents which the applicants have annexed to their supporting affidavits relate to past events especially the list from the District Surveyor which is not exhaustive and has been superseded by the list in court which formed the basis of the judgment.

Mr. Omusundi, learned counsel for the intended interested parties submits that the applicants are shareholders and beneficiaries of the land hence should be enjoined to participate in the survey. **Mr. Korir holding brief for M/s Rotich** does not oppose the application. **Mr. Macharia learned counsel for the defendant** argues that the applicants have not applied to re-open the matter. Moreover, that the applicants are on the list. **Mr. Momanyi, learned counsel for the plaintiff** argues that the applicant's interest is well taken care of in the order made on 15.3.2015. **Mr. Birech, learned counsel for the Committee** argues that this is a matter they have gone very far as every beneficiary in the list will get a share. There is a list signed by all members including the applicant. Robert Kaptich has participated in the matter.

I have considered the application herein and do find that it is only intended to stay enforcement of the order dated 18.3.2016 because if the same is issued, that will be the end of the matter. There will be nothing for determination after issuance of the orders sought as the applicants are not seeking the setting aside of the order of 18.3.2016. The application otherwise intends to create a stalemate. The applicants are on the list of member of the farm and therefore, their interests are well considered. Moreover, It is not clear as to what the applicants are objecting to. The overriding objective of the Civil Procedure Act to which the rules made there-under including Order 1 Rule 10 (2) are subordinate is to facilitate just, expeditious, proportionate and affordable resolution of disputes. The application herein is contrary to the objective and is otherwise an abuse of process of court and is dismissed with costs.

DATED AND DELIVERED AT ELDORET ON 4TH DAY OF NOVEMBER, 2016.

ANTONY OMBWAYO

JUDGE