

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 110 OF 2013

SAMUEL KISANG CHEBOI & 2 OTHERS PLAINTIFFS

VERSUS

ELISHA KIPLETING MUREI & 4 OTHERS DEFENDANTS

RULING

1. The plaintiffs/applicants filed a notice of motion dated 17th March, 2015 in which they prayed that they be allowed to re-open their case and be allowed to amend the plaint and file list of witnesses and documents. The applicants state that they closed their case on 9/12/2014 after which the defendants sought for leave to file their list of documents. When the defendants were granted leave to file their documents, they did so but failed to serve them upon the applicants in time. When the list of documents by the defendants was served, their lawyer went through them and was of the opinion that the plaintiffs needed to file an amended defence and file further witness statements and list of documents. The applicants contend that they need an opportunity to give evidence on the documents filed by the defendants.
2. The applicants application is opposed by the defendants/respondents based on grounds of opposition filed on 2/4/2015. The respondents contend that the applicants application is an abuse of the process of the court and that the same is meant to plug holes in the plaintiffs case. The respondents also contend that the applicants are fishing for materials for their case.
3. I have considered the applicants application as well as the opposition to the same by the respondents. The applicants seem to take issue with the late service of the list of documents. The respondents counsel submitted that the list of documents was prepared in time but it was not possible to serve the firm of Nyairo & Company Advocates because they had already closed their offices for Christmas. The applicants counsel state that they were served on 6/1/2015. The counsel for the respondents conceded that the list of documents was indeed not served within the time lines given by the court. Be that as it may, the issue for determination in this matter is not whether the documents were served as required or not. The issue for determination is whether there is need to re-open the plaintiffs case and whether the plaintiffs should be allowed to amend their plaint.
4. The defendants have filed their list of documents and bundle of documents on which they wish to rely on. Some of the documents being relied on by the defendants are the same documents which the plaintiffs are relying on. These documents include proceedings in **Eldoret High Court Civil Case No. 190 of 1999 (O.S)** between **Kimurgor Tolgos & 601 Others -vs- Estate of Isaac Koskei & 13 Others**. The only difference between the documents relied by the plaintiffs and the defendants in respect of the above suit is that the plaintiffs have not included the ruling from the suit but the defendants have included it. The other documents which are in the defendants list of documents include copies of title deeds held by some of the defendants named in the present suit. The rest of the documents are receipts for payment of monies for survey etc. There is also a letter of consent.
5. All the documents contained in the defendants list of documents are not new to the plaintiffs. The plaintiffs have known them because the dispute regarding this land has been in existence since the early 70's. I do not see how such documents can necessitate re-opening of the plaintiffs case. The plaintiffs have not been ambushed by the documents. They knew about the same. When some

members of the plaintiffs group came to court in 2005 seeking to be allowed to bring a suit out of time, the titles contained in the defendants list of documents were to be a subject of the suit which they intended to bring against the present defendants. The plaintiffs have included the ruling resulting from the miscellaneous application filed in 2005 in their further list of documents filed on 30/1/2014. There is therefore nothing new raised by the defendants which will necessitate re-opening of their case.

6. On the issue as to whether the plaintiffs can be allowed to amend their plaint, it is important to point out that the plaintiffs have based their claim against the defendants on a letter of allotment issued in favour of **Marakwet Chepsiro Investment Group** on 7/7/1992. This Group was formally registered on 20/4/2011. The group was registered as owner of **L.R. No. 4366** on 27/6/2012. In the plaintiffs proposed amendment to the plaint, they are seeking to have some five titles cancelled. The five titles are **Chepsiro/Kibuswa Block 1/(Kelchinet)105, 112, 113, 116 and 118**. **L.R. No. 116** is registered in the name of **Elisha Kipleting Busienei** who is the first defendant. **L.R. No. 112** is in the name of **Thomas Kipkorir Koech** the second defendant herein. **L.R. No. 113** is in the name of **Noah Kirwa Chuma** who also owns **L.R. No. 152** and is the third defendant in this case. **L.R. No. 105** is in the name of **Obadiah Kimutai Saina** who is the fourth defendant. **L.R. No.105** is in the name of **Wilson Kipkemboi Busienei** who is the fifth defendant. All these titles held by the defendants save for the one held by the second defendant were issued in 1990. The one for the second defendant was issued in 1996.
7. As at the time the suit land was allocated to the plaintiffs on 7/7/1992, the defendants had already obtained their titles in 1990 about two years earlier than the time the plaintiffs were allocated the land. It is therefore difficult for the court to allow an amendment whose effect will result in cancellation of titles which were obtained before the suit land was allocated to the plaintiffs. Amendments can be allowed at any stage in the proceedings provided those amendments will not result in prejudice or injustice to the other party which will not be compensated in costs. In the present case, the plaintiffs are seeking to have titles issued to the defendants before the plaintiffs acquired the land cancelled. This will be very prejudicial to the defendants and no amount of costs can compensate such prejudice. The plaintiffs are also seeking for an order that **L.R. No. 4366** which apparently has been converted from Registration of Titles Act (now repealed) to Registration of Land Act (now repealed) do revert to the former Act. Though the date of the conversion is not clear, it is apparent that the conversion may have been done after 30/8/1989 when the grant was surrendered back to the Government. By this time the plaintiffs had not been allocated the land and therefore an amendment to allow inclusion of such a prayer will be prejudicial to the defendants. I therefore find that none of the plaintiffs prayers can be allowed. The upshot of this is that applicants application is hereby dismissed with costs to the defendants/respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 22nd day of June, 2015.

E. OBAGA

JUDGE

In the presence of M/s. Chege for plaintiffs.

Court clerk Isabellah.

E. OBAGA

JUDGE

22/6/2015