



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 478 OF 2013

TILAL OLE KAURA1ST PLAINTIFF

JAMES NAIRUKO2ND PLAINTIFF

TUMPES DAPASH3RD PLAINTIFF

MBARTAM GROUP RANCH4TH PLAINTIFF

VERSUS

BARTA KAURA1ST DEFENDANT

PAUL MUNTET.....2ND DEFENDANT

DANIEL SURURU.....3RD DEFENDANT

BARKITABU GROUP RANCH4TH DEFENDANT

RULING

(Application to set aside a consent; suit by plaintiffs claiming land; counterclaim by defendants for the same land; consent compromising suit entered by counsel for plaintiffs and one defendant; no consultation with other defendants; consent clearly a fraud and is set aside)

1. The application before me is that dated 17 February 2015 filed by the 1st, 2nd and 4th defendants. The application seeks to have set aside a consent recorded on 19 December 2014 between the counsel for the plaintiffs and the 3rd defendant. The application is based on the ground that the consent was entered into without any involvement or consultation with the 1st, 3rd and 4th defendants and therefore ought to be set aside.

2. I find it necessary to set the background leading to this application.

3. This suit was commenced by way of plaint filed on 24 July 2013 through the law firm of M/s Ochego Onduso & Company Advocates. The case as filed is that the defendants who are chairman, secretary and treasurer of the 4th defendant, Barkitabu Group Ranch, have interfered with the land parcel Narok Cis-Mara/Siana 'A'/129, which is said to belong to the plaintiffs through the Mbartan Group Ranch (4th plaintiff). In the suit, the plaintiffs want a declaration that the suit property belongs to Mbartan Group

Ranch.

4. The defendants entered appearance through the law firm of M/s Lel & Associates Advocates. They filed a statement of defence in which they pleaded that the plaintiffs obtained title to the suit property unlawfully. They also filed a counterclaim in which they asked for a declaration that the suit property belongs to the defendants and for cancellation of the title issued to the plaintiffs.

5. As the case was pending, a written consent was filed on 16 December 2014. The consent was to the effect that the plaintiffs and the 2nd and 4th defendants have agreed to an out of court settlement, that Mbartan Group Ranch are the sole owners of the suit property and that the suit is therefore withdrawn entirely. The consent was executed by James Ochecho Onduso, counsel for the plaintiffs and Paul Muntet, the 2nd defendant who signed the consent as Secretary of Barkitabu Group Ranch.

6. In this application, it is averred that the consent order was secretly and fraudulently recorded as the 1st, 3rd and 4th defendants were never involved. The supporting affidavit sworn by Bartan Kaura, the 1st defendant, is that the officials of Barkitabu Group Ranch have never held a meeting or passed any resolution conceding to the plaintiffs' suit and neither did they authorize Mr. Paul Muntet to record any consent. It is also pointed out that the defendants have counsel on record who was never informed about the consent.

7. At the hearing of the application, Mr. Ndubi, holding brief for Mr. Ochecho Onduso for the plaintiffs, conceded to the application.

8. I on my part am satisfied that the consent must be set aside. It is clear that Mr. Muntet did not have any authority to compromise the suit to the detriment of the principal defendant which is Barkitabu Group Ranch. It is also beyond me how Mr. James Ochecho Onduso, an advocate who should have known better, agreed to enter into a consent with Mr. Muntet, in person, while the defendants had counsel on record. The consent is a clear fraud and cannot be allowed to stand. It is null and void. Given the concession by the plaintiffs, I find it unnecessary to say more.

9. The consent together with all consequential orders are hereby set aside. The suit is to proceed as if no such consent was ever filed.

10. The applicants shall have the costs of this application jointly as against the plaintiffs and Mr. Paul Muntet.

11. It is hereby ordered.

Dated, signed and delivered in open court at Nakuru this 17th day of June 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mrs Oliech holding brief for Mr Onduso for plaintiffs/respondents.

Mr Kilele present for defendants/applicants.

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU