



Thindigua Company Limited v Njunge & 2 others; Kung'u & another (Interested Parties) (Civil Case 2163 of 2001) [2023] KEELC 17139 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17139 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL CASE 2163 OF 2001
LN MBUGUA, J
APRIL 27, 2023**

BETWEEN

THINDIGUA COMPANY LIMITED PLAINTIFF

AND

FRANCIS GITAU NJUNGE 1ST DEFENDANT

JOSEPH KIMANI 2ND DEFENDANT

NDAGWATHA KIARIE 3RD DEFENDANT

AND

STEPHEN KARANJA KUNG'U INTERESTED PARTY

BERNARD KINYAJUI PETER INTERESTED PARTY

RULING

1. This matter was referred for court annexed mediation on February 23, 2022, of which the Parties reached a consent dated October 12, 2022. It provides *inter alia*;
 - a. Plaintiff to sign and deliver conveyance instrument for LR No 76/638 and LR No 76/395 to the 1st Defendant to undertake his registration at his own cost.
 - b. 1st Defendant to give vacant possession of LR No 76/396 to the 3rd Defendant, within six months.
 - c. Plaintiff to release to the 3rd Defendant title documents for LR No 76/396.
2. Subsequently, the Interested Parties filed the application dated October 28, 2022 which is coming up for determination before this court. They seek orders that the Defendants give an undertaking that



- immediately upon adoption of the mediation agreement herein, the 1st Defendant shall transmit the title documents pertaining to LR No 76/638 to the 4th Applicant.
3. The application is based on grounds on its face and on the Interested Parties' supporting affidavit sworn on October 28, 2022 by their council Njugi Gachogu. He deposes that he has learnt through the 1st Defendant's counsel that the mediation settlement agreement which he did not execute has since been filed in cause No MLM/MED/094/2022 and the cause marked as settled and is now scheduled for adoption in this cause.
 4. He deposes that the Interested Parties position in this suit stands jeopardized should the 1st Defendant receive the documents pertaining to LR No 77/638. He contends that the Interested Parties' position in this suit is one of purchasers for value and without notice of the parcel of land known as LR No 76/638 from the 1st Defendant.
 5. In opposition, the 1st Defendant swore a replying affidavit dated November 25, 2022. He deposes that the Applicants have never been substituted as Defendants in this suit and that they have not filed any pleadings herein thus they do not have locus in the matter.
 6. The Plaintiff opposed the application through a replying affidavit sworn on November 15, 2022 by Moses Gatitu Wang'oo, its advocate on record. He deposes that the Interested Parties were enjoined in this suit as Interested Parties and not as Defendants as claimed. He further deposes that the position was clarified by this court in its directions of May 22, 2014, thus the Interested Parties cannot reject the mediation agreement as they have no locus.
 7. The Court directed the parties to file written submissions. The 1st Defendant's submissions dated January 13, 2023 are a rehash of his replying affidavit.
 8. The Plaintiff filed written submissions dated January 9, 2023. He relies on the case of *John Harun Mwau v Simone Haysom & 2 others; Attorney General & 2 others (Interested Party)* [2021] eKLR to submit that the application is a tactic to delay the matter and the court has power to strike out a party who is a hindrance to the conclusion of the case under Order 1 Rule 10 (2).
 9. He urges the court to be guided by the *Constitution*, the *Environment and Land Court Act* and *Civil Procedure Rules* on undertaking substantive justice and not be held back by technicalities raised by the Interested Parties.
 10. On February 9, 2023, this court made a finding that by the time this matter was referred for mediation, the Interested Parties had not brought to the attention of the other parties and the Court that they had a formal statement of claim. The Interested Parties were also denied leave to file a further affidavit to introduce their documents including a statement of claim.
 11. Following the said finding, there is no basis upon which the Interested Parties can set aside the mediation settlement agreement dated October 12, 2022 entered into between the Plaintiff, the 1st Defendant and the 3rd Defendant. The Interested Parties therefore had no locus to participate in the mediation proceedings which gave rise to the mediation settlement agreement dated October 12, 2022.
 12. The application dated October 28, 2022 has no merit and the same is hereby dismissed. Each party to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.

LUCY N MBUGUA



JUDGE

In the presence of:-

Njugi for Applicants

Nguru for 1st Defendant

Gatitu for Plaintiff

Court assistant: Vanilla

