



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 57 OF 2018

GIRIAMA RANCHING CO. LTD.....PLAINTIFF

-VERSUS-

- 1. DEVELOPMENT BANK OF KENYA LTD**
- 2. GARAM INVESTMENTS AUCTIONEERS.....DEFENDANTS**

-AND-

- 1. RIVA OILS COMPANY LIMITED**
- 2. SAMUEL KAZUNGU KAMBI**
- 3. DAVID KOMEN TUITOEK.....INTENDED INTERESTED PARTIES**

R U L I N G

1. This is a Ruling to a **Notice of Motion** application dated **8th July, 2021** by the Intended Interested Parties/Applicants seeking to be enjoined as interested parties in this suit.
2. The application is premised on among other grounds that the Interested Parties are necessary and proper parties in respect of the dispute as the court may not be able to effectively and fairly adjudicate the dispute without involving the Intended Interested Parties. The reasons advanced for this are that the 1st Defendant extended to the 1st Interested Party two loan facilities which were secured by a legal charge over a parcel of land known as **L.R No.12785 Kilifi North West of Bamba** registered in the Plaintiff's name. In addition, the 2nd facility was secured by an all assets debenture over the assets of the 1st Interested Party and personal guarantee by the 1st Interest Party's Directors who are now the 2nd and 3rd Intended Interested Parties.
3. It is however averred that the 2nd facility was not disbursed in the terms agreed and a dispute arose between the 1st Intended Interested Party and the 1st Defendant Bank culminating to the bank filing **Milimani HCCC No.59 of 2013** against the Intended Interested Parties. In the said suit, the bank sought and was granted interlocutory Judgment against the Intended Interested Parties for the sum of Kshs.304,906,835.40 but the same was later set aside by the court vide a Ruling dated **6th October, 2015** and the Interested Parties were granted leave to file a defence.
4. Nonetheless, the said **Milimani HCCC No.59 of 2013** was compromised vide a consent Judgment dated **7th January, 2016** wherein it was agreed that the interested parties would pay to the 1st Defendant bank a total sum of Kshs.305,000,000/=. It is however averred that the 3rd Intended Interested Party has filed an application which is yet pending in the **Milimani HCCC No.59 of 2013** seeking to set aside the consent Judgment. In the premises, it is reiterated that the court cannot properly adjudicate the dispute without the joinder of the Intended Interested Parties. The application is further supported by the affidavit of the 2nd Intended Interested Party which replicates the grounds of the application as summarized above.
5. The 1st Defendant/Respondent Bank opposed the application by filing a **Replying Affidavit** sworn by its legal manager, **Doreen Kimori** on **11th August, 2021**. The deponent has reiterated the existence of **Milimani HCCC No.59 of 2013** and the fact that the fact the said suit was compromised by consent Judgment as averred by the Applicants. She has however added that the Applicants reneged the terms of the

consent Judgment and besides filing a mala fides application to set aside the consent Judgment, the Applicants are, through the present application, attempting to re-litigate and bring on board issues already considered by the court in **Milimani HCCC No.59 of 2013**. That notwithstanding, the 2nd applicant had taken up a similar application in **Milimani Insolvency Cause No.018 of 2019** and sought to have the Nairobi matter consolidated with this suit. However, the court in dismissing the 2nd Defendant's application asserted that there was already in place a valid decree in **Milimani HCCC No.59 of 2013** which has not been set aside and the cause of action therein was totally different from the present suit.

6. In the premises, the 1st Defendant's view is that the Intended Interested Parties are mainly interesting in protracting the litigation of the present suit and ultimately delay the enjoyment of Judgment delivered in favour of the bank. Based on the foregoing, 1st Defendant craves for the court to dismiss the application at hand.

7. The application was canvassed through oral submissions. Counsels for the parties reiterated what is in their pleadings and informed the court that they would rely on the grounds adduced in support and rebuttal of the application respectively.

ANALYSIS AND DETERMINATION

8. I have given due consideration to the application dated **8th July, 2021** the grounds in support and in rebuttal of the same and in my view, the sole issue for arising for determination is *whether or not the Applicants should be joined as Interested Parties in in this suit.*

9. The **Black's Law Dictionary, 10th Edition**, defines "**interested party**" (at page 1298) as "**a party who has a recognizable stake (and therefore standing) in a matter**".

10. Further, the Supreme Court in the case **Francis Kariuki Muruatetu & Another –vs- Republic & 5 Others [2016]eKLR** echoed its sentiments as in the case of **Trusted Society of Human Rights Alliance –vs- Mumo Matemu** thus;

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”

11. The superior court went further to lay out the elements/grounds for consideration where a party seeks to be enjoined in proceedings as an Interested Party to be as follows;

a) *The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.*

b) *The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.*

c) *Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.*

12. In the application before court, the three Applicants seek to be enjoined as Interested Parties and the reasons for that as I have conceptualized is the relationship established between them and the parties in this suit by the loan facilities advanced by the 1st Defendant to the 1st Interested Party.

13. It is a common ground that a parcel of land owned by the Plaintiff was offered as collateral to those facilities and later that the 1st Defendant sued the Interested Parties for recovery of the loan facilities in **Milimani HCCC No.59 of 2013**. Both parties are agreeable that a consent Judgment was entered against the Interested Parties for the sum of KShs.305,000,000/= and the said Judgment is yet to be reviewed and/or set aside.

14. I have also read through the **Plaint** initiating the present suit and it is more or less anchored on the said consent Judgment as the Plaintiff avers that by virtue of the consent Judgment, it was discharged of the obligation to settle any of the facilities and the 1st Defendant bank should permanently be restrained from disposing the Plaintiff's parcel of land offered as security and indeed be compelled to release the original title to the said parcel of land.

15. It must however, be noted that whether or not the Applicants are enjoined as Interested Parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed from the pleadings. That is to say the Interested Parties cannot frame fresh issues or alternatively introduce new issues apart from the ones initially presented to court.

16. In the present suit, the key issue remains whether or not the Plaintiff should be discharged from any obligation to settle the outstanding facilities advanced to the 1st Interested Party. One of the principles for admission of an Interested Party as highlighted above is that such a party must demonstrate that he/she has a stake in the matter before the Court. In the present case, the Applicants have not even attempted to show an identifiable stake they have in the present case or in its outcome, besides merely outlining the state of an earlier relationship with regard to the loan facilities.

17. In addition to that, the Interested Parties' rights and obligations as far as the loan facilities are concerned were addressed and determined

in **Milimani HCCC No.59 of 2013** and cannot be re-introduced herein. Be that as it may, the interested parties have not stated what prejudice they would suffer if they are not enjoined in the present suit.

18. Consequently, the upshot of the foregoing is that the intended interested parties in this case, not having shown the personal interest they have in this matter, nor the prejudice that they will suffer if they are not enjoined in the matter, this court finds the application dated **8th July, 2021** by the Intended Interested Parties to be lacking in merit. The same is therefore dismissed with costs to the 1st Defendant/Respondent.

It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT MOMBASA THIS 28TH DAY OF JANUARY, 2022.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Kemboi counsel holding brief for Mr. Nyachoti counsel for Interested Parties

Mrs. Chengo counsel holding brief for Mr. Kenga counsel for Plaintiff

No appearance for Defendants