



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

HCC NO. E 209 OF 2019

SEMA HEALTH PRODUCTS.....PLAINTIFF/RESPONDENT

VS.

HOUSING FINANCE COMPANY OF KENYA LIMITED1ST DEFENDANT/RESPONDENT

TAIFA AUCTIONEERS..... 2ND DEFENDANT/RESPONDENT

NJOGU-INI BUILDING INVESTMENT LIMITED.....PROPOSED 3RD DEFENDANT/RESPONDENT

RULING

1. The main question raised by the Notice of Motion dated 3rd September 2019 is whether Njogu-ini Building Investment Limited (Njogu-ini) is a necessary party to these proceedings and should be allowed to join as a third Defendant.
2. A subsidiary matter is whether the Court should order a Court annexed Mediation between Njogu-ini and Sema Health Products (Sema) should the joinder be allowed.
3. These proceedings are about a customer – Bank dispute. Sema borrowed a sum of Kshs.65,409,933 from Housing Finance Company of Kenya Ltd (HF) to enable it partly finance the construction of a Building on LR Nairobi/Block 93/1248 (the subject property). Although there may have been contention as to whether HF was in default of repayment of the facility, Sema avers that it entered into an agreement to sell the property to Njogu-ini for a sum of Kshs.210,000,000.00 with the authority and permission of HF. A deposit of Kshs.23,800,000.00 was made and the purchase was to be completed in 90 days.
4. Sema complains that because of a relationship between the Chief Executive Officer of HF and Njogu-ini, Njogu-ini attempted to renegotiate the agreement by seeking a reduction of the purchase price from Kshs.210,000,000 to Kshs.190,000,000. The relationship averred is that Robert Kibaara (the current C.E.O of HF) is a brother to Kenneth Kibara a Director of Njogu-ini. Sema contends that the relationship has been used to the advantage of Njogu-ini.
5. After the presentation of this suit, Sema and HF entered a consent order of 9th July 2019 in the following terms:-
 1. The Plaintiff has upto 31st October 2019 to complete the sale of the suit property to Njogu-ini Building Investment Limited or enter into a sale agreement with any other purchaser.
 2. Should the Plaintiff fail to complete the sale to Njogu-ini Building Investment Limited or enter into a sale agreement with a credible purchaser by 31st October 2019, the 1st Defendant be at liberty to proceed with the sale by public auction of the suit property.
 3. Costs in the cause.
 4. Mention on 28th November 2019
6. In seeking to join these proceedings Njogu-ini cites this order and states that it is an integral part of these proceedings. Further that the completion of sale is at a deadlock and the Court annexed mediation may unlock the stalemate.

7. The plea for joinder is resisted by Sema who not only contend that Njogu-ini is not a necessary but state that by a letter of 19th June 2019, Njogu-ini rescinded the contract for sale.

8. The law on when a party is necessary in proceedings is well settled. The principles applicable have been restated by the Supreme Court in the decision of Methodist Church in Kenya v Mohamed Fugicha & 3 others [2019] eKLR;

[43] It thus emerges quite plainly that the High Court can join interested parties to proceedings, where necessary. That is why In *Meme v. Republic* [2004] 1 EA 124; [2004] 1 KLR 637, the High Court observed that a party could be enjoined in a matter on the basis of certain considerations viz:

“(i) joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

(ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) joinder to prevent a likely course of proliferated litigation.”

9. Although Njogu-ini has been mentioned in the pleadings that pit Sema and HF, Njogu-ini does not seek to enter these proceedings so as to defend itself from adverse comments. The reasons why it seeks to come into the proceedings is stated on the grounds in support of the application and rehashed in the affidavit. They are three reasons:-

1. That the proposed 3rd Defendant/Applicant has been cited in the orders of this Court of 9/7/2019, being the party known as Njogu-ini Building Investment Limited.

2. That the Proposed 3rd Defendant/Applicant entered into a sale and purchase agreement dated 4/12/2018 with respect to Nairobi/Block 93/1248 South B, thus being an integral part of these proceedings.

3. That the completion of the sale and purchase agreement between the proposed 3rd Defendant/Applicant is deadlocked and the deadlock may be opened through Court annexed mediation.

10. Starting with the consent of 9th July 2019. The objective of the consent was to give Sema an opportunity to dispose the charged property by private treaty failing which HF would proceed to sale by public auction. The opportunity was open upto 31st October 2019 and Sema was to sell the property to Njogu-ini or any other purchaser. The consent was not an enforcement of the arrangement between Sema and Njogu-ini and could not be given that Njogu-ini was not privy to it.

11. The dispute before Court is between a Bank and its customer. There however seems to be a controversy between Sema and Njogu-ini in respect to the sale of the charged property. These two conflicts are not related and Njogu-ini cannot use these proceedings to resolve the difficulty it find itself as against Sema.

12. Joining Njogu-ini into these proceedings will only serve to detract or convolute what is simply a Bank/Customer dispute. The Notice of Motion dated 3rd October 2019 is without merit and is hereby dismissed with costs.

Dated, Signed and Delivered in Court at Nairobi this 28th Day Of October 2019.

F. TUIYOTT

JUDGE

PRESENT;

Ngugi for proposed 3rd Defendant/Applicant

Kahatho for Plaintiff/Respondent

No appearance for Defendants

Court Assistant: Nixon