



REPUBLIC OF KENYA



Cheruiyot v National Land Commission & 4 others; Sang (Interested Party) (Environment & Land Case E005 of 2022) [2023] KEELC 22091 (KLR) (7 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22091 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E005 OF 2022
EO OBAGA, J
DECEMBER 7, 2023**

BETWEEN

SAMMY KIPKETER CHERUIYOT APPLICANT

AND

NATIONASL LAND COMMISSION 1ST RESPONDENT

CHIEF LAND REGISRTAR 2ND RESPONDENT

**PRINCIPAL SECRETARY, MINSITRY OF LANDS & PHYSICAL
PLANNING 3RD RESPONDENT**

MINISTRY OF LANDS & PHYSICAL PLANNING 4TH RESPONDENT

COUNTY GOVERNMENT, UASIN GISHU COUNTY 5TH RESPONDENT

AND

PETER KIPSIGEI SANG INTERESTED PARTY

RULING

1. This is a ruling in respect of a chamber summons dated 14.7.2022 in which the Interested party/Applicant seeks to join NCBA Bank Kenya PLC as a second Interested party. The Applicant is the registered owner of LR No. Eldoret Municipality Block 4/335 (suit property). The Applicant purchased the suit property in a Public Auction which was conducted on 26.6.2020.
2. The Plaintiff/Respondent had taken a loan from the Intended Interested party and offered the suit property as security. The Respondent failed to service the loan and the intended interested party exercised its statutory power of sale and sold the suit property to the Applicant at Kshs 60,500,000/=



3. After the conclusion of the auction, it was noticed that the lease in respect of the suit property had expired. The intended interested party proceeded to have the lease renewed after which the same was transferred to the Interested party.
4. The Applicant now contends that joinder of the intended interested party has crucial information regarding the renewal of the lease and subsequent transfer to the Applicant. The Applicant argues that joinder of the intended interested party will enable the court to effectually and completely determine the issues in contention.
5. The Applicant further contends that the intended interested party is involved in another suit in the High Court at Eldoret being HCCC No. E002 of 2020 (*Peter Kipsigei Sang v NCBA Bank & others*) where the suit was comprised by consent and all the actions during and after the auction including renewal of the lease were deemed to have been properly and regularly done.
6. The intended interested party opposed the Applicant's application based on a replying affidavit sworn on 11.10.2022. The intended interested party contends that its interest in the suit property was extinguished upon a successful auction and transfer of the suit property to the Applicant. It is therefore an unnecessary party in these proceedings as it has no interest in the suit property.
7. The Plaintiff/Respondent opposed the Applicant's application based on grounds of opposition dated 10.11.2023. The Respondent contends that the intended interested party has not made any application to be joined in these proceedings. The Respondent further argues that it has not been demonstrated that the intended interested party has sufficient identifiable interest as to call for its joinder and that in any case, joinder of the intended interested party will not assist the court in determining the issues in contention.
8. I have carefully considered the Applicant's application as well as the opposition to the same by the Plaintiff/Respondent and the proposed intended interested party. I have also considered the oral submissions during the hearing of the application as well as the authorities cited. The only issue for determination is whether the Applicant has demonstrated that there is need to join the intended interested party in these proceedings.
9. The intended interested party herein had exercised its statutory power of sale and sold the suit property to the Interested party. The loan owing to the intended interested party had shot to a high of Kshs 300,000,000/=. As at the time of auction, the lease in respect of the suit property had expired. The intended interested party moved to have the lease renewed for purposes of transfer to the interested party.
10. Once the sale and transfer including renewal of the lease were completed, the intended interested party ceased to have any interest in the suit property. I have looked at the prayers in the plaint. There is absolutely no need to join the intended interested party in these proceedings. This case will be determined completely without joinder of the intended interested party. I therefore find no merit in this application which is dismissed with costs to the Plaintiff/Respondent and the intended interested party.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 7TH DAY OF DECEMBER, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;



M/s Aketch for Mr. Kigen for Interested party.

Mr. Nyanjwa for Mr. Mumia for proposed Interested party.

Court Assistant - Laban

E. O. OBAGA

JUDGE

7TH DECEMBER, 2023

