



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND COURT**  
**ELC. CASE NO. 33 OF 2002**

**AMOS MWANGI KARANJA.....APPLICANT**

**VERSUS**

**AMOS WERU MURIGU.....1<sup>ST</sup> RESPONDENT**

**MARATA WANGARI KAMBI.....2<sup>ND</sup> RESPONDENT**

**DISTRICT LAND REGISTRAR,**

**NYAHURURU.....3<sup>RD</sup> RESPONDENT**

**EDDIE WAMBUA KARANJA &**

**NANCY WANGUI KARANJA .....4<sup>TH</sup> RESPONDENT**

**(Administrators of the estate of Karanja Gaturu)**

**JOSEPH NG'ANG'A NJUGUNA.....5<sup>TH</sup> RESPONDENT**

**RULING**

Coming up before me for determination is the Chamber Summons dated 23<sup>rd</sup> October 2012 in which the Applicant sought the following orders:

1. That Joseph Nganga Njuguna be enjoined into this suit as the 5<sup>th</sup> Respondent.
2. That upon granting of prayer (1) above, an order do issue compelling the 5<sup>th</sup> Respondent to vacate and or evicting the 5<sup>th</sup> Respondent from land parcel known as Nyandarua/South Kinangop/9237 (hereinafter referred to as the "suit property") pending the hearing and determination of this suit.
3. That the Officer Commanding Station (Haraka Police Station) be ordered to enforce and or supervise the enforcement of order (2) above.

4. That the costs of this Application be provided for.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the Applicant, Amos Mwangi Karanja, sworn on 23<sup>rd</sup> October 2012 in which he averred that he is the son of the late Karanja Gaturu in whose name the suit property was registered. He averred further that the suit property was earlier known as South Kinangop Scheme Plot No. 66 but was later renamed Nyandarua/South Kinangop/66 but got subdivided by the 1<sup>st</sup> Respondent into new numbers 4991-4996 then amalgamated to bear its current name Nyandarua/South Kinangop/9237. He noted that pursuant to **Nairobi HC Succession Cause No. 2194 of 2004**, he and the 4<sup>th</sup> Respondents were appointed the Administrators of the estate of their late father and that he is one of the beneficiaries of the suit property. He added that before he could move the court to reverse the subdivisions, the proposed 5<sup>th</sup> Respondent entered into the suit property purporting to have bought the same. He asserted that the registration of the proposed 5<sup>th</sup> Respondent as the new owner of the suit property was fraudulent as it was done without regard to the caution and restriction registered against the title. For that reason, he sought for this court to allow his Application.

The Application is contested. The Proposed 5<sup>th</sup> Respondent, Joseph Nganga Njuguna, filed his Replying Affidavit sworn on 6<sup>th</sup> December 2012 in which he averred that he is the registered owner of the suit property in which he has built and has been undertaking dairy and other farming activities since August 2009. He produced a copy of his title document. He added that the suit property is an amalgamation of four titles which he bought as follows:

- a. Nyandarua/South Kinangop/4991 from Kamau Kariuki
- b. Nyandarua/South Kinangop/4992 from Joseph Maina Kambi
- c. Nyandarua/South Kinangop/4993 from David Njogu Kambi
- d. Nyandarua/South Kinangop/4994 from Charles Muchina Kambi

He annexed copies of the old title documents and the Sale Agreement. He averred that prior to the said purchase, he conducted an official search at the Nyandarua Lands Office and found that none of the four titles had any caution, inhibition or encumbrance. He added that he bought the said parcels regularly and obtained all the consents to develop as required by the County Council of Nyandarua (as it then was). He also stated that he did not know of the Plaintiff's claim at the time of the purchase. He further added that he came to learn that the Applicant had moved the High Court in **Nakuru vide HCCC No. 67** of 2011 seeking cancellation of the title well after the titles had been closed but his request was declined. He annexed a copy of the Ruling. He concluded by stating that there is therefore no good or lawful reason to drag him into litigation that does not relate to him in any way.

I have considered the Application and the issue for determination is whether or not to enjoin the proposed 5<sup>th</sup> Respondent as a party to this suit. The applicable law is found in **Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010** which provides that,

*“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.*

**Order 1 Rule 3** of the **Civil Procedure Rules, 2010** provides as follows,

*“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist,*

***whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common questions of law or fact would arise.”***

My assessment of the above legal provisions is that the court shall have regard to the necessity of a party in the suit for the purpose of “effectually and completely to adjudicate upon and settle all questions involved in the suit”. The question that therefore arises is whether the participation of the proposed 5<sup>th</sup> Defendant in this suit is necessary for this purpose. The answer in my view is positive owing to the fact that the suit property is the subject matter of this suit and the Applicant claims a portion thereof as a beneficiary of the estate of his late father who was the initial registered owner thereof. The proposed 5<sup>th</sup> Respondent, being the current registered owner of the suit property, is therefore a necessary party in this suit to assist the court determine whether or not the Applicant’s claim is valid. Accordingly, I hereby allow this Application in terms of prayer no. 1. I note that the 5<sup>th</sup> Respondent has been in occupation of the suit property for over 5 years and is conducting farming activities thereon. I will allow him to continue to be in occupation of the suit property pending the hearing and determination of this suit. Prayers no. 2 and 3 of this Application are therefore declined. Costs shall be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19<sup>TH</sup>**

**DAY OF AUGUST 2016.**

**MARY M. GITUMBI**

**JUDGE**