



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. CASE NO. 196 OF 2012

LUCIA NYAGAKI..... PLAINTIFF

VERSUS

JOEL KURIA NDUNGU.....1ST DEFENDANT
JANE WACUKA GATURU.....2ND DEFENDANT
GRACE WANJIRU MUTETI.....3RD DEFENDANT
JOB SAMUEL MWANGI MBURU.....4TH DEFENDANT
MONICA MAKUMI.....5TH DEFENDANT
NANCY WAIRIMU NDERITU.....6TH DEFENDANT
ISAAC KARIUKI.....7TH DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 21st May 2013 in which the Applicant seeks for the following orders:

1. That Roy Gachungi Munga'u be joined as an interested party in these proceedings.
2. That HCCC No. 728 of 2005 and HCCC No. 1423 of 2005 be consolidated with this suit;
3. That costs be provided for.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of Roy Gachungi Munga'u sworn on 20th May 2013 in which he averred that he is the bona fide purchaser of the parcel of land known as Ruiru/Ruiru East Block 2/5042 (hereinafter referred to as the "suit property") having purchased the same from one Rebecca Wanjiku Mukui on 18th January 1992. He further averred that the said Rebecca Wanjiku Mukui gave him the original title deed for the suit property which is in his possession to date. He confirmed having taken possession of the suit property by fencing, digging a pit latrine and building a semi-permanent two roomed house. He then averred that on 20th April 2005, he visited the suit property and found trespassers building structures then claiming to have bought

the same from one Benedette Wambui Njoroge who had bought from one Hannah Wanjiku Wanyoike. He noted that the trespassers are the Defendants/Respondents. He further disclosed that the said Benedette Wambui sued him and Rebecca Wanjiku Mukui claiming she is the true owner of the suit property in **HCCC No. 728 of 2005** and that Lucy Nyagaki sued him and Rebecca Wanjiku Mukui claiming ownership of the suit property in **HCCC No. 1423 of 2005** and that those two suits have since been consolidated.

The Application is opposed. The Plaintiff/Respondent, Lucia Nyagaki, filed her Replying Affidavit sworn on 27th June 2013 in which she averred that pursuant to consent orders recorded before Justice Ojwang as he then was on 7th December 2005, **HCCC No. 728 of 2005 and HCCC No. 1423 of 2005** were consolidated. She further averred that the hearing of the consolidated suit never took place due to the death of Benedette Wambui Njoroge and Rebecca Wanjiku Mukui and that to date no substitution had ever been done to replace the deceased with their personal representatives. She further intimated that she had since withdrawn **HCCC No. 1423 of 2005** paving way for the filing of the instant suit and that this Application is merely meant to scuttle the hearing of this suit.

The Defendants do not oppose this Application.

The question I am required to determine is who may be enjoined in a suit as an interested party and does the Applicant qualify to be enjoined in this suit as such. **Order 1 Rule 10(2) of the Civil Procedure Rules, 2010** defines an interested party as a party whose involvement is necessary for the court to “effectually and completely adjudicate upon and settle all questions involved in the suit”. Further, the Supreme Court of Kenya decision in the case of **Trusted Society of Human Rights Alliance versus Mumo Matemo & 5 Others (2014) eKLR** defines an interested party as follows:

“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.”

Looking at this case, it emerges quite clearly that at the heart of this suit is a dispute regarding the ownership of the suit property. This issue was the same in the two suits which were consolidated by consent of the parties therein being **HCCC No. 728 of 2005** and **HCCC No. 1423 of 2005**. First of all, the Plaintiff cannot say that she withdrew **HCCC No. 1423 of 2005** as this suit was consolidated with **HCCC No. 728 of 2005**. The consolidated suit is still alive and cannot be withdrawn by one party. Secondly, it is clear that the Applicant similarly claims ownership of the suit property as do the other parties to this suit. In my view, the Applicant has a stake in the suit property and his participation in this suit is necessary for the court to “effectually and completely adjudicate upon and settle all questions involved in the suit”. I therefore find no difficulty in allowing him to be enjoined into this suit as an interested party.

Should this suit be consolidated with **HCCC No. 728 of 2005** and **HCCC No. 1423 of 2005**? In **David Ojwang’ Okebe & 11 Others v South Nyanza Sugar Company Limited & 2 Others CA Kisumu Civil Appeal (Appl) No. 139 of 2008 (2009) eKLR**, the Court of Appeal discussed the main object of consolidation, that is,

“to save costs and time by avoiding a multiplicity of proceedings covering largely the same ground. Thus where it appears to the court that there are common questions of law or fact; that the right to relief is in respect of the same transaction or serious of transactions; or that for some other reason, it was desirable to make an order for consolidation of one or more cases, then the court will do so.”

It appears to me that it is immensely appropriate to consolidate this suit with the previously consolidated suits **HCCC No. 728 of 2005** and **HCCC No. 1423 of 2005** for the main objective of establishing the ownership of the suit property as between the various parties vying for it. I therefore proceed to

consolidate this suit with **HCCC No. 728 of 2005** and **HCCC No. 1423 of 2005** and direct that the lead file shall be this file.

The Application is therefore hereby allowed. Costs shall be in the cause.

DELIVERED AND SIGNED AT NAIROBI THIS 23RD DAY OF JANUARY 2015.

MARY M. GITUMBI

JUDGE