



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENT AND LAND COURT

ELC NO. 238 OF 2014

TWIGA CONSTRUCTION COMPANY.....1ST PLAINTIFF

ALLIED INDUSTRIES LTD.....2ND PLAINTIFF

-VERSUS-

DIRECTOR OF PHYSICAL PLANNING,

NAIROBI CITY COUNTY.....1ST DEFENDANT

COUNTY SECRETARY, NAIROBI COUNTY.....2ND DEFENDANT

FOXGROVE LIMITED.....INTERESTED PARTY

RULING

The Plaintiff herein had on **4th March, 2014** filed a Notice of Motion against the 1st and 2nd Defendants seeking for injunctive orders.

The Defendants did oppose the said Notice of Motion and one **J.K Bareh** swore a Replying Affidavit and sought for dismissal of the Plaintiffs application. However, when the matter came to court for directions, on **5th June, 2014**, **Mr. Nyawara Advocate**, informed the court that he had instructions to file an application to enjoin **Foxgrove Ltd** as an Interested Party.

In that regard, the Interested Party filed a Notice of Motion dated **10th June, 2014** under **Sections 1A, 1B,3 and 3A of the Civil Procedure Acts, Order 1 Rule 10 (2) of the Civil Procedure Rules** and **all other enabling provisions of law** and sought for this order:

i) That the court be pleased to order that Foxgrove Ltd, the Interested Party) Applicant herein be added as party either as an Interested Party and or 3rd Defendant in the suit.

ii) That the Plaintiffs do amend the pleadings accordingly and serve the same upon the Interested Party.

iii) That cost of the application be in the cause.

The application was premised on the annexed affidavit of **PRAFUL G DODHIA**, the Director of the Interested Party and on the grounds that are stated on the face of the application. There grounds are:

(i) The Interested Party is the registered owner of all that piece or parcel of land known as Land Registration No. 11880/10 which property neighbours parcel No. 2916/26 and 11880/2 owned by the Plaintiffs.

(ii) The Plaintiffs have constructed a wall on the access road cutting off the Interested Party's property No. 11880/10 aforesaid and that wall/blockage is the subject of the suit.

(iii) The Interested Party is a proper party in this suit as the blockage of the access road affect it and the plaintiffs have no right at all to block the said access which is a public road.

(iv) That any order that may be given in this case, especially if in favour of the Plaintiffs' will render the Interested Party's property inaccessible, a situation that would create conflict between the Plaintiff and the Interested Party.

(v) That the Interested pay wants to defend the sit and oppose this application.

The Plaintiff opposed the application and filed the grounds of opposition. These grounds are that; the application as grounded and the prayers sought are inconsistent and amount to the abuse of the process of this Court.

i) That the effect of the said application is to seek the control of the Plaintiffs' case by the prospective Interested Party.

ii) That the grounds in the application do not form any part of the Plaintiff cause of action.

iii) Further, that the instant application is meant to delay the court process and deny the plaintiffs the opportunity to present their case as framed.

iv) Therefore the instant application is vexatious, ambiguous and an abuse of the process of this court.

The parties canvassed this Notice of Motion by way of written submissions. I have now carefully considered the instant Notice of Motion, the written submissions and the relevant law. The application is premised under **order 1 Rule 10(2)** which states that: -

“the court may at any stage of the proceedings either upon and without the application of either party and on such terms as may appear in court to be just order that the name of any party improperly joined whether as plaintiff or defendant be struck out and 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 effectively and completely to adjudicate upon and settle all question involved in the suit be added”

The application is also premised under **Sections 1A and 1B of the Civil Procedure Act** which deals with the overriding objective of the Act and rules of Civil Procedure Act which is to facilitate the just, expeditious and proportionate resolution of Civil disputes.

Further **Section 3A of the Civil Procedure Act** bestows the court with inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

The application is therefore brought under the relevant laws contrary to the assertion by the Plaintiffs/Respondents that the application and the prayers are inconsistent and amount to an abuse of the

process of court.

The court has power either on its own motion or by the application of any party order that a party be joined in the suit. However, the party has to show that it has an identifiable and not trifling interest in the matter which is the subject of the litigation.

The Applicant relied on the case of **Nyambene Miraa Traders Association & Others Vs National Agency for the Campaign Against Drugs Abuse, Petition No. 374 of 2013 eKLR**, where the court defined Interested Party as :-

“a person or entity that has an identifiable stake and legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigations”

The Plaintiffs/Respondents opposed the application on the grounds that the same is unmerited as the grounds relied upon do not form part of the causes of action in the Plaintiffs' suit. The Plaintiffs' relied on various authorities among them **Kennedy Mwita & another Vs Board of Trustees, NSSF & 2 Others (2012) eKLR**, where the court held that: -

“the relevant test for determination whether or not to join a party in proceedings as Defendant is whether there is relief flowing from that Defendant to the Plaintiff.”

In determinant this application, the court will have to answer these questions first.

i) Whether the Interested Party is a necessary party to these proceedings to enable the court effectively determine the matters in question.

ii) Whether the rights and interests of the purported Interested Party will be greatly prejudiced if the suit is allowed to proceed in his absence.

As I had stated earlier, the court has discretion to substitute and add parties to proceedings at any stage provided their presence is necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

There is no doubt that the plaintiffs herein were served with an enforcement Notice by the 1st Defendant herein. The Interested Party has alleged that it is the one that complained to the 1st Defendant prompting the 1st Defendant to issue the Enforcement Notice . The Plaintiffs then moved to court and obtained injunctive orders against the Defendants herein.

The Interested Party has alleged that the presence of the wall that was erected by the Plaintiffs has greatly impacted on the Interested Party's parcel of land as they have been denied access to the road reserve and thus land locked.

The issuances of the injunctive orders against the Defendant herein will therefore, have an impact on the Interested Party. The Interested Party should be given an opportunity to ventilate its position. Since the Plaintiffs have filed the suit touching on the said access road or wayleave as alleged by the Plaintiffs, the court finds that it is not necessary for the Interested Party to file a separate suit on the same issue. The Court finds that the Applicant herein is a necessary party as an Interested party to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit.

The Interested Party owns the parcel of land adjacent to the Plaintiffs parcels of land. The Plaintiffs have obtained injunctive orders against the action of the Defendants herein which action was prompted by the Interested Party's complaint. The court finds that the Applicant is directly affected by the Plaintiffs action and there is indeed a common question to be determined.

Having now carefully considered the Applicant's application dated **10th June, 2014**, the court finds it merited. The Applicant is allowed to be enjoined in the suit as an Interested Party.

The upshot of the foregoing is that the Applicant's Notice of Motion dated **10th June, 2014** is found to be merited and the same is allowed entirely. Costs shall be in the cause.

It is so ordered.

Dated and delivered this **21st day of April, 2015**.

L .GACHERU

JUDGE

21/4/2015

Before Gacheru J

Hilda – Court clerk

None appearance for the Plaintiff/Respondent

None appearance for the Defendant/Respondent

None appearance for the Applicant/ Intended interested party

Though Ruling date was taken in Court in the presence of all the concerned counsels.

L.GACHERU

JUDGE

Court:

Ruling read in the absence of the partes herein though aware of the Ruling dates. Date was taken in court in their presence.

L.GACHERU

JUDGE

21/4/2015