



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
LAND AND ENVIRONMENTAL DIVISION
ELC CIVIL SUIT NO. 405 OF 2014

PATRICK MWENDA GITONGA.....1ST PLAINTIFF

GRACE NJERI KARANJA 2ND PLAINTIFF

AND

VERONICA WANJA NJUGUNA..... DEFENDANT

VERSUS

STEPHEN MBURU KAMAU.....1ST APPLICANT

MARY WAMBUI KAMAU.....2ND APPLICANT

HANNAH WANGUI KAMAU.....3RD APPLICANT

VIRGINIA NJERI KAMAU.....4TH APPLICANT

LUCY WANGARI KAMAU.....5TH APPLICANT

MONICA MUKAMI KAMAU.....6TH APPLICANT

JOSEPH MUIGAI KAMAU.....7TH APPLICANT

BONIFACE NJUNGE KAMAU.....8TH APPLICANT

FRANCIS NJOROGE KAMAU.....9TH APPLICANT

NICHOLAS MUYA KAMAU.....10TH APPLICANT

JOSEPH MUIGAI KAMAU11TH APPLICANT

RULING

The 1st to the 11th Applicants vide a Notice of Motion dated 19th May 2014 and filed on 20th May 2014 made an application expressed to be brought under section 1A, 1B of the Civil Procedure Act, Order 1 Rule 10 and Order 51 Rule 1 of the Civil Procedure Rules to be enjoined to the present suit as Defendants on the grounds that the plaintiff claims to have bought a portion of land parcel **L.R. NO.4885/128** (the suit property) from the defendant yet the property does not belong to the defendant alone but to all the applicants in common in equal shares. The Applicants further state the suit property is a subject matter in **Nairobi Succession Cause NO. 799 of 2009 -Estate of Kamau Muigai** (deceased) where an application to annual the grant is pending.

The applicants application is supported on the annexed affidavit sworn by **Joseph Muigai Kamau**, the 7th Applicant. The Applicants have annexed a copy of the Grant of **L.R.NO.4885/128 L.R. 129517** which clearly indicates the suit property **L.R. NO.4885/128** out of which a portion of ¼ acre was to be hived and transferred to the plaintiffs by the Defendant is indeed registered in the names of the applicant's and the Defendant "**as tenants in common in equal shares**". The parcel of land measures 0.1942 of a hectare (approximately ½ of an acre). The applicants thus claim the Defendant did not solely own the suit property so that she could deal with it to their exclusion. Besides, the applicants state that the confirmation of grant in **H.C Succ. Cause NO. 799 of 2009-** Estate of **Kamau Muigai** (deceased) against which the sale of the ¼ acre to the plaintiffs was predicated is the subject of challenge pursuant to the summons for its revocation dated 9th March 2011 annexed and marked "**VWN1**" to the replying affidavit of the Defendant sworn on 11th April 2014 and filed in court on 15th April 2014.

The Plaintiffs oppose the Applicants application for joinder and filed grounds of opposition dated 19th August 2014 and a replying affidavit sworn by **Patrick Mwenda Gitonga** on the same date. The plaintiffs aver that the applicants are not necessary parties to these proceedings and no relief flows from the Applicants to the plaintiffs under the prayers sought in the plaint and that any order/decreed which emanates from this suit can be enforced without the Applicants presence. The plaintiffs aver they have no privity of contract with the Applicants and there would be no basis to enjoin the applicants to the suit. The plaintiffs argue the Applicants can pursue their own separate claim if they have one. The plaintiffs aver that the applicants are not a necessary party to enable the court to effectively and completely adjudicate upon and settle the issues between the plaintiff and the defendant and thus the Applicants joinder would merely serve to delay and increase costs and would be an obstruction to the expeditious dispensation of justice by the court to the plaintiff and the Defendant.

The issue for determination in this matter is whether the applicants have a real interest in the suit so that they can be adjudged to be a necessary party to the suit to enable the court to effectively adjudicate upon and settle all the issues between the parties in the same suit.

Order 1 rule 10(2) provides for joinder of parties thus:-

10.(2) 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 to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

It is not in doubt that the portion of ¼ acre that the plaintiffs entered into an agreement to purchase from the Defendant formed part of **L.R.NO. 4885/128** now registered in the names of the Applicants and the Defendant as tenants in common in equal shares. The entire parcel of land measures barely ½ of an acre and that is the parcel owned in common by the Applicants and the Defendant which would mean the Defendant cannot indeed deal with the land without the participation of the applicants. Going by the

registered title it is also clear the Defendant's interest cannot extend to a portion of ¼ acre which she purportedly sold to the plaintiffs. The interest of the Defendant as per the title would be the equivalent of 1/24 of an acre.

Interalia as per the plaint the plaintiffs seek a permanent injunction to restrain the Defendant from in any manner interfering with or dealing with a portion of ¼ acre of the suit property and further an order for specific performance compelling the Defendant to complete the sale of the ¼ acre from the suit property. My view is that the Defendant on the face of it does not have ¼ acre portion of land which he would sell to the plaintiffs out of **L.R.NO.4885/128** which as per the registered title is owned by 12 persons being the Defendant and the 11 applicants. The orders sought in the plaint if granted would undoubtedly infringe on the rights and interest of the applicants in the suit property. It is also noteworthy that in **HC Succession Cause NO. 799 of 2009** the court ordered that the status quo relating to the suit property be maintained until the dispute is determined. In all probability if the orders sought in the present suit were to be granted, that status quo would be disturbed.

My view of this matter is that until the dispute in the succession cause is determined it is not possible to determine the interest of the defendant in the suit property in view of the fact that the Defendants interest in the suit property stems from the Succession Cause.

As at the time the plaintiffs filed the present suit they were aware that the Defendant was registered as owner of the suit property together with the applicants and thus the orders they sought would of necessity affect the applicants. In the premises it is my finding that the applicants have shown and/or demonstrated they have some interest in the suit property and that they would be a necessary party to be enjoined as a party to the suit to ventilate their interest in the suit property.

I accordingly allow the application by the applicants and order that they be enjoined as the 2nd to the 12th Defendant. The applicants are granted leave of 15 days from today to file their pleadings.

The costs of the application shall be in the cause.

Ruling dated, signed and delivered this 16TH day of APRIL 2015.

J. M. MUTUNGI

JUDGE

In the presence of:

..... For the Plaintiffs

..... For the Defendant

..... For the Applicants