



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. CASE NO. 512 OF 2005

NKUNGWE INVESTMENT LIMITED..... PLAINTIFF

VERSUS

JANE N. KIHARA.....1ST DEFENDANT

JOHN WAIGANJO KIHARA.....2ND DEFENDANT

VICTOR NJUGUNA KIHARA.....3RD DEFENDANT

KENNETH WACANJA KIHARA.....4TH DEFENDANT

AND

CANAANLAND ESTATE WELFARE ASSOCIATION (Suing through its Officials Namely):

PETER MUGAMBI MUCHEE

DR. BENSON KAIRU KAMAU

MICHAEL GATONYE

FRANCIS MUYA KIMURI

KEFA WAMICHWE

DAVID KHAINGA.....INTERESTED PARTY

RULING

Coming up before me for determination is the Chamber Summons dated 19th November 2012 in which the Interested Party/Applicant, Canaanland Estate Welfare Association, seeks for the following orders:

1. Leave to file this Application out of time.
2. Stay of these proceedings pending the hearing and determination of this suit
3. To be enjoined in this suit as an interested party represented by its officials namely Peter

Mugambi Muchee, Dr. Benson Kairu Kamau, Michael Gatonye, Francis Muya Kiuri, Kefa Wamichwe and David Khainga.

4. Costs of this Application.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of Peter Mugambi Muchee, sworn on 19th November 2012 in which he averred that he is a member and chairman of Canaanland Estate Welfare Association (hereinafter referred to as the "Association") and a resident of Canaanland Estate. He further averred that the Association is duly registered under the laws of Kenya and produced a copy of the registration certificate. He further averred that on diverse dates, members of the Association bought plots in L.R. No. 7959 Roysambu (hereinafter referred to as the "suit property") from one Joseph Nganga Njuguna. He indicated that the members of the Association bought their plots from Joseph Nganga Njuguna on the strength of an agreement he had with the registered owner of the suit property, one Paul Samuel Kihara on 13th February 2002. He indicated that the said Joseph Nganga Njuguna had subdivided the suit property into plots which were sold to the members. He attached copies of the certificates and agreements. He further averred that as a result, the applicants are bona fide owners of 15 out of 18 half acre plots on the suit property which they have occupied since the year 2002 and have enjoyed peaceful, uninterrupted and exclusive occupation thereof. He further disclosed that after the purchase, the members embarked on construction and development of their respective plots by erecting permanent structures thereon in which they spent millions of shillings. He attached photos to attest to this assertion. He then stated that it is now over six years since the agreement between Mr. Joseph Nganga Njuguna and Paul Samuel Kihara was entered into and that it is therefore time-barred by the **Limitation of Actions Act**. He also pointed out that some of the members' claims against Mr. Njuguna have also expired by virtue of the said statute hence their prayer to be granted leave to file their claims out of time. He disclosed that efforts by Mr. Joseph Nganga Njuguna to be enjoined in this suit were unsuccessful on that ground. He pointed out that the Plaintiff is only claiming a portion of the suit property comprising only of 3 half care plots out of 18 plots while they are claiming the other 15 plots though the injunction existing herein covers the entire suit property. He stated that if this suit is heard and determined without their participation, they stand to be adversely affected as they are the ones in actual possession of their plots on the suit property where they have invested millions of shillings.

The Application is contested. The Plaintiff filed its Grounds of Objection dated 18th January 2013 as follows:

1. That the Applicant is an amorphous body that has no legal identity and it is neither registered under the **Societies Act or Companies Act** or the **Business Names Act** and therefore has no capacity to use or be sued and therefore cannot be enjoined in this suit.
2. That the interest of the Applicant is similar to that of Joseph Nganga Njuguna because the members allege to have purchased certain plots from him. That Mr. Njuguna made an Application dated 22nd September 2009 seeking to be enjoined in this suit ostensibly to cater for his own interest and that of the Applicant but that that application was dismissed by this court on 14th December 2010. That this Application is a mere duplication of the dismissed application.
3. That the Plaintiff's claim is for specific portions of the suit property which do not affect the plots occupied by the members of the Applicant therefore the Applicant will not be affected by the outcome of this suit and the anxiety of the members of the Applicant is unfounded.
4. That the Plaintiff has no claim whatsoever against the said Joseph Nganga Njuguna or any member of the Applicant and that a joinder of the Applicant into this suit will merely cloud the issues for determination.

The Interested Party/Applicant filed their written submissions which I have considered.

The main issue arising herein for my consideration is whether to join the Interested Party/Applicant as an interested party in this suit. The instructive provision of the law on this point is **Order 1 rule 10(2)** of the **Civil Procedure Rules, 2010** which provides as follows:

"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.”

Going by the provision of the law cited above, the key criteria the court uses in deciding whether to enjoin a person into a suit is whether their presence is necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the suit. The Plaintiff has made the important point that it does not claim any of the 15 plots on the suit property occupied by and claimed by members of the Association but instead only claims 3 plots therein. That being the position, to my mind, the intended interested party’s claim is not against either the Plaintiff or the Defendants. Their claim is against one Joseph Nganga Njuguna who is not a party to this suit. Indeed, the said Joseph Nganga Njuguna sought to be enjoined into this suit by way of his Application dated 24th September 2009. That Application was dismissed with costs by Justice Muchelule on the ground that Mr. Njuguna’s claim was time-barred under the **Limitation of Actions Act**. The members of the Association all confirmed that their claim to portions of the suit property emanate from their purchase of the same from the said Mr. Njuguna through agreements of sale entered into with him. They exhibited copies of some of the agreements and certificates issued to them. There is no relationship between the members of the Association and the Plaintiff or Defendants in this suit. The presence of the Association in this is suit is therefore not “**necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit**”.

On that ground, I hereby proceed to dismiss this Application. Each party shall bear their own costs.

DELIVERED AND SIGNED AT NAIROBI THIS 22ND DAY OF MAY 2015.

MARY M. GITUMBI

JUDGE