



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
LAND AND ENVIRONMENTAL DIVISION
ELC CIVIL SUIT NO. 2054 OF 2007

KENYA ANTI-CORRUPTION COMMISSION..... PLAINTIFF

-VERSUS-

PAUL MOSES NGETHA..... DEFENDANT

AND

SAM N. GACHAGO (CHAIRMAN)

GEORGE MULI MWALABU (SECRETARY)

ALEXANDER JOHN OGUTU (TREASURER)

Suing on behalf of

WOODLEY RESIDENTS WELFARE SOCIETY INTERESTED PARTY

R U L I N G

The intended interested party Woodley Residents Welfare Society by a chamber summons application expressed to be brought under sections 1A, 1B, 3, 3a, 95 and Order 1 rules 8 and 10 of the Civil Procedure Act, Cap 21 Laws of Kenya, seek the following substantive orders:-

1. That Woodley Residents Welfare Society be allowed to join these proceedings as an interested party.
2. That a total of 41 cases enumerated under prayer (3) of the application be consolidated with the present suit and be heard together.
3. That costs of the application be provided for.

The intended interested parties application is predicated on the grounds that are set out on the face of the application and on the affidavit sworn in support thereof by one **Sam Gachago**, Chairman of the Applicant Society. The Applicant sets out the following grounds in support of the application:-

1. The suit property relates to the parcel of Land **L.R.NO.209/13539 I.R.NO.76717** situated in the City of Nairobi commonly known as Woodley **Joseph Kangethe** estate in which the Nairobi City Government formerly Nairobi City Council was the registered owner as a lessee from the

Government of Kenya.

2. That the applicants are members of Woodley Residents Welfare Society who have a beneficial interest as tenants of Nairobi City County Government formerly Nairobi City Council most of whom have been in occupation from the time the estate was developed in the late 1950's.
3. There is a need for the interested party to respond to the issues raised in the suits as they have useful information that would assist the Honourable Court in effectually adjudicating the matter.
4. That it's in the best interest of justice that the application be allowed.

The supporting affidavit sworn by **Sam Gachago** outlines the interest of the Woodley Residents Welfare Society, a registered society since 26th October 1994 as per the annexed copy of the certificate of registration marked "SNG1". In the supporting affidavit the intended interested party through the deponent deposes that its members were the sitting tenants of the residential houses of Woodley Estate from the former City Council of Nairobi at the time the City Council passed the resolution pursuant to which they sold the houses. The interested party contend that the sitting tenants applied to be allocated the houses they were residing in for purchase as per the Government Policy and have annexed copies of the application letters marked as a bundle as "SNG6" but state that the majority of the applicants were ignored by the City Council and the houses were unfairly and irregularly allocated to cronies and close associates of the City Council's Chief Officers.

The interested party avers that following uproar from the members of the public and the residents the City Council on 14th September 1999 passed a resolution annulling the sale of the houses. Further the interested party avers that on 17th July 2002 the then Minister for Local Government while responding to a Parliamentary question concerning the sale of the Woodley houses the Minister stated the sale was illegal as the sale was not sanctioned by the City Council and the Minister for Local Government.

The plaintiff did not oppose the interested parties application for joinder. However the Defendant strenuously opposed the application and the Defendant, **Paul Moses Ngetha**, filed a detailed replying affidavit in opposition to the applicants application. The Defendant's replying affidavit has gone to considerable length to set out the process that persons/individuals including the defendant went through in applying to be allocated the Woodley Estate Houses to purchase. The Defendant states he was an occupant of the house that he applied to purchase pursuant to the policy by the Government and the council that tenants were to be allowed to purchase the houses that they occupied. I understand the principal complaint by the interested party/applicant to be that even though its members were the sitting tenants and the majority applied to be allocated the houses that they occupied to purchase, their applications were disregarded and the majority of the houses were sold to outsiders who were not tenants in the houses to the prejudice of the applicants members.

On the directions of the court the interested party/Applicant and the Defendant filed written submissions to canvass the application for joinder. The Applicant filed their submissions dated 7th October 2014 on the same date while the Defendant/Respondent filed his submissions dated 19th September 2014 on the same date.

Having considered the Applicants application, the supporting affidavit, the respondents replying affidavit and the submissions by the parties the real issue for determination by the court is whether the applicants have demonstrated they have a recognizable interest in the subject matter of the suit and whether they stand to be affected by the outcome of the suit and for that matter they need to be enjoined in the suit so as to protect and articulate their interest in the suit.

Order 1 Rule 10(2) provides:-

"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”.

The applicants contend they have an interest in these proceedings in as far as the proceedings relate to the contested and disputed sale of the Woodley houses in the manner that the same were sold. The applicants state its members had a beneficial interest over the various houses that were sold by the Council in the sense that priority in the sale of the houses was to be given to the sitting tenants who were members of the applicant which was not done resulting in irregular and illegal sales which the Applicant wish to challenge once getting enjoined in the proceedings.

In support of their submission that they have an interest in these proceedings the Applicants referred the court to the ruling by the Supreme Court in the case of **“Trusted Society of Human Rights Alliance –vs- Mumo Matemo & 5 others (2014) eKLR** where the learned Judges of the Supreme Court referred to Blacks Law Dictionary where **“interested party”** is defined as **“ a party who has a recognizable stake (and therefore standing) in a matter”**.

The Judges further stated in the case that:-

“An interested party is one who has a stake in the proceedings though he or she was not party to the suit 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 herself appears in the proceedings and champions his or her cause”.

The Applicants further referred the court to the ruling by **Edward M. Muriithi, J** in the case of **Brek Sulum Himed –vs- Constituency Development Fund Board & Another (2014) eKLR** where the **Judge while** considering what the court ought to consider in determining whether a party is an interested party or a necessary party the Judge stated thus:-

“5. The issue therefore becomes whether it is in the interest of justice for the applicants to be joined, whether as necessary parties or as interested parties- whether it is on own motion of the court or on their application. As necessary parties, the provisions of rule 10 of Order I will apply to require that their involvement to be necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the suit”. As interested parties, the applicants need only demonstrate interest in the subject matter of the suit or in other relevant matter affecting the suit.

6. I do not think that the phrase “all questions involved in the suit” in Order 1 Rule 10(2) is to be restrictively construed to mean only such questions as are raised by the present parties. I think an issue may be properly taken to be a question involved in the suit if it is related to the suit as to affect the question in the suit”.

In the suit before the court the applicants are impugning the process through which the Woodley estate houses were sold denying its members the opportunity to purchase the houses even though they were entitled to priority in the purchase. The Applicants seek to join the suit as interested parties to agitate their rights as the parties who were rightfully entitled to purchase the houses in the event the same were lawfully to be sold. Being the sitting tenants at the time the impugned purchases/sales were done the Applicants members were affected by the decision to sell and consequently they would have an interest in the outcome of this suit which is being tried and more or less whose outcome and/or decision will affect the other suits which have been stayed. Therefore in my view the issues and questions involved in this suit equally would be questions and/or issues the answers of which the interested parties would have an interest in rendering their enjoinder to the suit necessary.

The Defendant/Respondent in his submissions has argued that the Applicant has no locus to bring the instant application in this suit stating that the applicants claim relates to the property known as **L.R.NO.209/3539** whereas the claim in the present suit relates to **L.R.NO.209/13539/154** which specifically attaches to the Defendant. It is indeed correct that the subject matter in this suit is **L.R.NO.209/13539/154** which was registered in the name of the Defendant’s but it is also true that

L.R.NO.209/13539/154 forms part of **L.R.NO.209/13539** commonly known as “**Woodley Estate**” and that the Defendant’s said title is one of the many “**Woodley Estate**” houses which it is alleged were illegally and unlawfully sold and in respect whereof the plaintiff has instituted various separate suits comprised in the “**stayed suits**” seeking recovery of the houses. To the extent that the Applicant represents the members of the Woodley Residents Welfare Society who are challenging the sale of the Woodley Estate houses my view is that the Applicant has locus to bring the instant application in this suit.

The Respondent has further contended the Applicants had filed a suit namely **HCCC NO. 623 of 2003** where they raised similar issues as they are raising in the present suit and therefore the Applicant’s claim of beneficial proprietary interest would be res judicata as it was substantially and directly in issue in that previous suit. I have perused the plaint annexed to the Respondent’s replying affidavit and note that the previous suit related to tenancies regulating the occupancy of the houses in Woodley Estate between the members of the Applicant and the city Council of Nairobi and I do not consider that the issues raised in that suit are directly and substantially in issue in the present suit where the issue is whether or not the sale of the Woodley Estate houses was illegal and irregular and thus ought to be annulled and cancelled. Additionally it has not been demonstrated the earlier suit has been finally determined to precipitate the invocation of the res judicata principle and I hold the present application by the interested parties is not res judicata.

Having considered the Applicant’s application and the submissions by the parties, I am satisfied the applicants have demonstrated they have a recognizable interest in these proceedings as they stand to be affected by the decision the court ultimately makes in regard to the impugned sales of the individual houses in Woodley estate. The majority of the applicant’s members were tenants in the houses and were entitled to participate in the purchases and/or would be entitled to know the fate of their tenancies upon the conclusion of the trial(s). I would therefore allow the Applicant’s application in terms of prayer (2) of the Notice of Motion dated 7th July 2014 and further make orders and directions as follows:-

- i. The suits referred to under prayer (3) of the Notice of Motion have been stayed pending the determination of this suit and I accordingly disallow prayer (3) of the Notice of Motion.
- ii. The supporting affidavit sworn by **SAM N. Gathogo** and the annexures thereto will be treated as the interested party’s pleading and response to this suit.
- iii. The enjoined interested party shall be entitled to give evidence after the plaintiff closes its case and before the defendant presents his case.
- iv. The court directs that the suit be mentioned on 20th July 2015 for further directions.
- v. The costs of the instant application shall be in the cause.

Orders accordingly.

Ruling dated, signed and delivered this **19th** day of **June**, 2015.

J. M. MUTUNGI

JUDGE

In the presence of:

..... For Plaintiff

..... For Defendant

..... For Interested party