



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO. 29 OF 2020

BANDA HOMES LIMITED.....PLAINTIFF

VERSUS

ASSAL LIMITED.....DEFENDANT

BENSON KARANJA & 62 OTHERS.....INTENDED INTERESTED PARTIES

RULING

1. The plaintiff, **Banda Homes Limited**, brought this suit against the defendant through a plaint dated 20/5/2020. Its case was that, vide a sale agreement dated 1/11/2018, the defendant agreed to sell to it and it agreed to purchase various parcels of land surveyed out of **Land Reference Number 6944/2** at a purchase price of **Kshs 702,000,000**. In pursuance of the sale agreement, it paid the defendant a sum of Kshs 160,200,000 and the defendant issued it with a total of 40 deed plans together with duly executed conveyances. It added that through two subsequent deeds of variation, the completion period was extended for a further period of eleven (11) months. It further contended that when its agents took third parties to the suit properties for viewing, they were violently chased away by the defendant's agents. It added that the defendant had on several occasions taken third parties to the suit properties with the intention of selling the properties to them, hence it was apprehensive that unless restrained, the defendant would sell the properties to third parties. The plaintiff averred that the defendant's actions were illegal and prejudicial.

2. Consequently, the plaintiff sought, among other reliefs: (i) a declaration that it was the bonafide purchaser of the parcels of land pursuant to the sale agreement dated 1/11/2018 and the subsequent deeds of variation; (ii) a permanent injunction restraining the defendant against interfering with, trespassing on, dealing with or selling the parcels of land; (iii) an order of specific performance; and (iv) costs of the suit.

3. On 15/6/2020, Gacheru J granted the plaintiff interlocutory injunction. Parties subsequently attended court severally with a view to recording a settlement in the suit but none was recorded. Although a consent was filed, parties did not adopt it.

4. On 16/12/2021, some 63 individuals brought a chamber summons application dated 10/12/2021, seeking an order joining them as interested parties in the suit. The said application is the subject of this ruling.

5. The application was supported by an affidavit sworn on 8/12/2021 by **Kiboi Kerry Michael**. Their case was that they entered into sale agreements with the plaintiff on diverse dates between 2019 and 2021 for purchase of units erected and/or developed on various parcels surveyed out of the suit property. They paid purchase price to the plaintiff. They were apprehensive that this suit would affect their ownership of the parcels. They added that the defendant was attempting to violate and abuse their rights of ownership through the application dated 16/9/2021 which sought their eviction from the parcels of land.

6. The plaintiff supported the application by the said intended interested parties.

7. The defendant opposed the application through a replying affidavit sworn on 28/1/2022 by **Susan Wagikuyu Karanja**. She deposed that the intended interested parties would only be onlookers and would delay the finalization of the dispute because they were not privy to the contract between the plaintiff and defendant. She added that the intended interested parties had not demonstrated that their presence before this court is necessary for the effectual and complete adjudication and settlement of questions in this suit. She urged the court not to allow itself to be used by the proposed interested parties and the plaintiff to legitimize transactions that were illegal, unfounded and coated with fraud. She urged the court to reject the application.

8. I have considered the application, the response to the application and the submissions tendered on the application. I have also considered the relevant legal framework and jurisprudence. The single issue falling for determination in this application is whether the applicants have satisfied the criteria upon which a trial court exercises jurisdiction to grant an order of joinder.

9. The principles that guide our courts when exercising jurisdiction to grant orders of joinder are well settled. A party making an application for joinder is required to demonstrate an identifiable interest or stake in the proceedings and further demonstrate that he would suffer prejudice if the plea for an order of joinder is declined. The Supreme Court of Kenya rendered itself on this principle in a ruling in **Francis Kariuki Muruatetu & another v Republic & 5 others [2016]eKLR; Petition No 15 of 2016** and outlined the following applicable criteria:

i. The personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.

iii. Lastly, a party must, in its application, set out the case and/or submission it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.

10. Secondly, **Order 1 rule 10(2)** vests in the trial court the power to *suo motto* join any person whose presence in the proceedings it considers necessary for the effectual and complete adjudication and settlement of all questions in the dispute. Order 1 rule 10(2) provides thus:

“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”.

11. This suit was initiated by the plaintiff to enforce a contract for sale of land dated 1/11/2018. The plaintiff seeks an order of specific performance of the contract against the defendant. The plaintiff contends that it paid the defendant Kshs 160,200,000 out of the agreed purchase price of Kshs 702,000,000. The intended interested parties/applicants were not privy to the said contract dated 1/11/2018. They have no cause of action founded on the said contract between the plaintiff and the defendant.

12. Secondly, if the intended interested parties have bonafide causes of action against either the plaintiff or the defendant in this suit, the recourse they have is to initiate appropriate independent proceedings to ventilate their grievances. Joining this suit as interested parties without proper statements of claim will not provide them with the platform for ventilating any claim they may be having. If what was stated in the supporting affidavit is true, then each of the intended interested parties should be ventilating their respective claims against the plaintiff or the defendant premised on the individual causes of action they purport to have.

13. Two key questions will ultimately need to be answered in this suit. The first question will be whether the plaintiff discharged its contractual obligations under the contract dated 1/11/2018 between it and the defendant. The second question to be answered will be whether the defendant breached the contract as alleged by the plaintiff. The parties to the contract dated 1/11/2018 should be able to assist the court in settling those key questions. Put differently, any evidence which the applicants have should be channeled through the parties who are privy to the contract which is the subject of this suit. I do not, in the circumstances, consider the intended interested parties as necessary persons in the adjudication and settlement of those key questions.

14. For the above reasons, the finding of the court on the single issue in the intended interested parties’ application dated 10/12/2021 is that the applicants have not satisfied the criteria upon which our courts exercise jurisdiction to grant orders of joinder. The result is that the chamber summons application dated 10/12/2021 is declined for lack of merit. The applicants shall bear costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 22ND DAY OF MARCH, 2022

B M EBOSO

JUDGE

In the Presence of: -

Ms Wangu for the plaintiff

Ms Mokaya for the Defendant

Mr Kori for the Intended Interested Parties

Court Assistant: Lucy Muthoni