



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
ENVIRONMENTAL AND LAND DIVISION

ELC CASE NO. 1002 OF 1993

SIMON GIKONYO & 142 OTHERS.....PLAINTIFF

VERSUS

JOSEPH KAMAU MUSA1ST DEFENDANT

JAMES KARIUKI MUCHIRI2ND DEFENDANT

MBURU MUCHINA3RD DEFENDANT

MWANGI KARIGI4TH DEFENDANT

MUKIRI NGOTHO5TH DEFENDANT

NELPHAT GICHUHI6TH DEFENDANT

RUIGU NJIRIRI.....7TH DEFENDANT

KARANJA MBAYA8TH DEFENDANT

ERERI COMPANY LTDINTERESTED PARTY

RULING

The applicants herein Eleri Company Ltd, as interested party brought this Notice of motion under Order 1 Rule 10(2) of the Civil Procedure Rules 2010, Section 3A of the Civil Procedure Act and all enabling provisions of the law. The applicant has sought for these orders

1. Spent
2. That the applicant be enjoined as interested party to this suit.
3. That an order be made discharging, removing or raising all the temporary interim orders made prior to the dismissal of the suit.
4. Cost of the application be provided for.

The Application was premised on the grounds on the face of the application notably that;

- a. The operations of the applicant has completely paralyzed due to the fact there is an order

- registered against the applicants parcels of prohibiting any dealings.**
- b. The property that was the subject matter of this suit belongs to the applicant and as such he is a necessary party herein and ought to have been made as much from the inception of this suit.**
 - c. The suit herein has already been dismissed but the orders registered against the title document and the applicant's land cannot be removed unless an order made specifically discharging the order made previous to the dismissal of the suit.**

The application is also supported by the affidavit of Njuguna M Kungu who alleged that the five parcels of land subject of this suit are registered in the name of Eleri company ltd and it is a necessary party to the suit. That the suit was dismissed on 20th December,2011 for want of prosecution but before there were orders prohibiting any dealings with the parcels of Land in question which orders are still registered against the land and the applicant cannot deal with its assets in any way it deems fit.

The Plaintiffs opposed the application and stated that the suit herein was dismissed on 20th December, 2011 by Justice Mwera and thus the court herein is functus officio. That no proper basis has been shown for joinder of Eleri Company Ltd as an interested party in the proceedings. That the application runs contrary to the well – recognized principle of law that there should be an end to litigation and that this application is an abuse of the court process.

The parties filed their respective submissions. There is no doubt that on 20th December, 2011, Justice Mwera dismissed the suit herein for want of prosecution. There is no suit pending. The court is thus functus officio and cannot issue order on a dismissed matter.

The applicant should have filed an application to set aside the orders issued on 20th December, 2011 and have the suit reinstated. Then on the reinstated suit, the applicant would have applied to be enjoined as a party to the said suit. The court finds that the suit herein was dismissed about 2 years ago. The same has not been reinstated and it would be impossible to order the applicant hereinto be enjoined as a party.

The applicant state that the injunction issued still stand. However with the dismissal of the suit, the said order stood discharged and I find no reason why applicant should ask the court to specifically order for the discharge of the said injunctive orders.

It was the finding of justice Mwera that the original title no longer exist because the suit properties have since been subdivided and new titles issued and therefore maintaining the suit in court with the injunction serves no purpose. The court orders are not issued in vain and litigation should come to an end.

Consequently the court finds that the applicant's Notice of Motion dated 11th April, 2013 is not merited. The same is dismissed with costs to the Plaintiffs/Respondents

Dated, signed and delivered at Nairobi this 20th day of August,2013

L. N. GACHERU

JUDGE