



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 1103 of 2004

GEORGE NJENGA KAGAI.....PLAINTIFF/RESPONDENT

VERSUS

SAMUEL KABI NJOROGEDEFENDANT

REVEREND PIUS TEMBO MANGOLI

REFEREND PETER NUTHU MWANGI (suing as the trustees of the Kenya

assemblies of God -NairobiApplicants/interested Parties.

RULING.

1) The interested parties hereinafter referred to as the applicants have filed a Notice of Motion dated 19/7/12 under section 1A, 1B 8 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure rules 2010, seeking the following orders;

i. That Reverent Pius Tembo Mangoli, Reverent Peter Nuthu Mwangi (suing as the trustees of the Kenya Assemblies of God Nairobi) be granted leave to be jointed as interested parties in this suit.

ii. That the defendant (Samuel Kabi Njoroge) be condemned to pay the costs of this application.

iii. That the interested parties be allowed to file the necessary pleadings within such reasonable time as this honourable Court shall/may direct.

The application is based on the following grounds;

i. The registered trustees of the Kenya Assemblies of God (interested parties/applicants) purchased L.R. No: Dagoretti/Riruta/4170, on/about the 27th August 2004 from the defendant (Samuel Kabi Njoroge) at the sum of Kshs. 2,400,000/- being the purchase price agreed between the parties thereto and paid the said purchase price but the said Samuel Kabi Njoroge refused to complete the transaction.

ii. Any orders sought in the plaintiff's paint dated 18/10/2004 and/or any other sub sequential orders will directly affect the vested rights of the applicants/interested parties in respect of the L.R. No. Dagoretti/Riruta/4170.

2) Reverend Peter Nuthu Mwangi swore a supporting affidavit dated 19/7/2012 in support of the application. He avers as follows: That he is a reverend at the Kenya assemblies of God and a trustee, who has authority of the board of trustees to swear this affidavit. That the registered trustees of the Kenya Assemblies of God bought from Samuel Kabi Njoroge L.R No. Dagoretti/Riruta/4170, the suit land on/about 27/8/2004 at a purchase price in the sum of Kshs.2,400,000/- wherein the sum of Kshs. 2,000,000/- was paid to Samuel Kabi Njoroge on 27/8/2004 through cheque No. 001759. That the parties agreed that the balance in the sum of kshs.400,000/- was to be paid to Samuel Kabi Njoroge has upon

completion and transfer, which balance has not been paid since he failed to honour the terms and conditions of the agreement, forcing them to lodge a Caution on the title of this suit property. That shortly thereafter, the trustees of the Kenya Assemblies of God got surprised to realize that a 3rd party was claiming interest/ownership of the same property. That the trustees of the Kenya Assemblies of God need to be joined to this suit as interested parties since any orders sought in the plaintiff's plaint dated 18/10/2004 and any or other consequential orders will directly affect the vested rights of the Kenya Assemblies of God, the trustees thereof.

3) Mr. George Njenga Kagai the plaintiff swore a replying affidavit dated 26/7/2012. He avers as follows: That earlier on 29th July 2003 he had entered into a sale agreement with the defendant in respect of the suit premises whereby it was mutually agreed that the purchase price was Kshs. 2,100,000/-. That on 25th March 2004 he had registered a caution against the suit premises which caution remains to-date. That on 19th November 2004 his advocates on record wrote a letter to the intended interested parties and informed them about his interest in the suit premises and about his present suit. That the applicants were well aware of the proceedings pending before court and they decided to keep off and that is why they have not explained in their affidavit how they came to know the present proceedings. That the applicants were also aware as early as 25th March 2004 when he registered a caution claiming his purchase interest in the suit premises and/or they became aware as at the time they purported to have bought the suit premises as they were expected to carry out due diligence by conducting a search at the lands office. That the applicants were also aware of his interest in the suit premises when their caution for registration was rejected as it is apparent from the copy annexed to the application that the same was not registered. That the applicants' purported sale agreement never received the consent of the land control board as required and as such the same is null and void for all purpose and intent pursuant to the provisions of the Land Control Board Act. That the said sale agreement is a nullity and cannot be the basis of the applicants claim in the suit premises and the applicants are trespassers in the suit premises and should vacate forthwith. That the applicants cannot be enjoined into the present suit as their claim is distinctive from his claim and as such they can, if they wish, file a fresh suit against the defendant since their claim lies for recovery of the purported payment made to the defendant which payment is just a debt owing but not the basis of an interest in land.

4) I have considered the affidavits filed by the parties together with the oral submissions made in Court and the two cases cited namely; *Harambee Co-operative Savings Credit Society – Vs- Mukinye Enterprises Limited (1983) KLR 611 and Githu Vs. Kitibi (1990) KLR 634*. Mr. Jaoko for the applicants reiterated what is deponed in the applicant's affidavit and submitted further that article 159 (2), of the Constitution supports their case to be enjoined in their suit and to be heard without any due regard to technicality or procedure. Mr. Oyugi for the plaintiff/respondent submitted that the Court has to consider that the interested party has a claim in law and according to them they have none. That the sale agreement is dated 2nd August 2004 and what the parties had was a contract under the Limitation of Actions Acts CAP 22 Section 4 (1) (a). That a contract is enforceable within six years which lapsed on the 26th of August 2010 and therefore the interested parties claim is not enforceable in law. That the agreement also contravenes section 15 of the Stamp Duty Act as no revenue stamp is show as duly paid. That the land falls under The Land Control Act CAP 302 and that section 6 and 9 of the said Act are applicable to the transaction. That the interested party can sue for the money they paid. That in November 2004 they were made aware of the pleadings and did nothing, that they are indolent and a Court of equity cannot allow them to be joined to the proceeding. Mr. Ruto for the defendant argued that in the interest of justice and bearing in mind the provisions of articles 159 (2) (d) of the Constitutions and section 1A and 1B of the Civil Procedure Act, the Court should exercise its discretion and find that it is necessary to join the interested parties in the proceedings for purposes of a fair trial. Mr. Jaoko in response stated that section 4 (2) of CAP 22 does not apply in the present case against the interested parties as they have been in occupation and time does not run.

5) Having considered all the above I find as follows; there is no dispute that the applicants and the plaintiff had an agreement with the defendant to purchase the suit property and that each party has paid the defendant's monies during the said transactions. From what is deponed in the plaintiff's affidavit at paragraphs 23 the applicants are in possession. I agree with them that any orders that will be given in this suit shall definitely affect them. The issues raised on consent from the Land Control Board are issues that

shall be determined at the hearing of this suit and the issue of limitations of actions, bearing in mind that the applicants are in possession. The authorities attached refer to consent for the sale of agricultural land in control transactions under CAP 302. These authorities will be relevant at the hearing of this suit. Bearing in mind the provisions of articles 159 2(d) and section 1A and 1B of the Civil Procedure Act, though they have come to Court after some length of time, I will not shut out the interested parties but allow their application so that they can be heard in the matter. I therefore grant prayer 1 of the application dated 11th July 2012. The interested party shall file their pleadings within 15 days of service of the pleadings by the plaintiff and defendant. Cost shall be in the cause.

Orders accordingly.

Dated, signed and delivered this 20th day of November 2012.

R. OUGO
JUDGE

.....For Interested Parties/Applicants

.....For the Plaintiff/Respondent

.....For Defendant/Respondent

.....Court Clerk