



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 1833 of 2007

ATHANAS BONAVENTURE WANYAMA.....1ST PLAINTIFF

PRISCILLA OMBITO WANYAMA.....2ND PLAINTIFF

VERSUS

THE LAND REGISTRAR –KIAMBU DISTRICT1ST DEFEDANT

REUBEN MUNA KANGETHE.....2ND DEFENDANT

RULING

1. The 1st defendant in this suit has filed a Notice of Motion dated the 30/7/2012 under order 1 Rule 15 (1) (a) of the Civil Procedure Rule section 3A of the Civil Procedure Act and the inherent jurisdiction of the Court seeking the following orders that:

i. The Court extends time with which leave may be applied for to issue a 3rd party notice to Mr. Stanley Kimani Irungu as per the draft 3rd party notice annexed to the affidavit in support hereof and marked JKN1.

ii. That leave be granted to the defendant affidavit to issue Mr Stanley Kimani Irungu with a 3rd party notice as per the draft third party notice annexed to the affidavit in support of and marked JNK1 and that costs be in the cause.

2. The application is premised on the grounds on the face of the application. The application is supported by the affidavit of Julian Ndeng'eri a state counsel in the office of the Attorney General. I have read the said affidavit together with Mr. Ochieng's replying affidavit sworn on behalf of the 2nd defendant. The respondent also filed ground of opposition. The plaintiff did not oppose the application.

3. The applicant's main reason is that there are allegations of fraud on the part of the 1st defendant indicating that there was an entry in the green card entry No. 7 indicating that the property was leased to Stanley Kimani Irungu, which they state that there is no trace and transfer of documents from the plaintiff to the said Stanley Kimani Irungu and that he is purported to be in possession of a good title capable of being transferred to the 2nd defendant. In the 3rd party notice they state the alleged fraud by Stanley Kimani Irungu. I have noted the defence filed by the 1st defendant at paragraphs 5, 6 and 7 it states its case against the said Stanley Irungu.

4. I have noted Mr. Ochieng averments in opposing to the application. I do agree with him that there was delay in filing the defence and that the plaintiff pleaded fraud but did not sue the said Stanley Irungu as a defendant. Counsel for the respondent has raised the issue of the application being bad in law. In my view the said submission is cured by the provisions of article 159 (2) (d) of the Constitution. However the applicant has explained why they need to have the 3rd party notice. At the end of this case this Court will have to make a decision. I know having partly heard this case that the said Stanely Irungu Kimani has been mentioned. Although it late in the day it is important to grant the said application. I therefore grant prayers No. 2 and 3 of the application dated the 30/7/12. A copy of the said notice shall be filed and shall be served on the 3rd party according to the rules relating to the service of summons.

Since this is part heard before this court parties shall take a mention dated to confirm compliance within 21 days from the date of this ruling.

Orders accordingly.

Dated, signed and delivered this Day 12th of November 2012.

R. OUGO
JUDGE

.....Plaintiffs
.....Defendant
.....Court Clerk