



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 1346 of 2006

THINDIGUA DAIRY INVESTMENTS LIMITED.....PLAINTIFF

VERSUS

NDUMBERI FARMERS CO-OPERATIVE SOCIETY LTD.....1ST DEFENDANT

HON. ATTORNEY GENERAL.....2ND DEFENDANT

KIAMBU MUNICIPAL COUNCIL.....3RD DEFENDANT

GEORGE NGUGI KARUNGO.....PROPOSED 4TH DEFENDANT

RULING

The Counsel for the 1st Defendant made an oral application in Court on 15th November 2012 to have the proposed 4th Defendant made a party to this suit under Order 1 Rule 3 of the Civil Procedure Rules, on the ground that the Plaintiff has during the pendency of this suit transferred the suit property namely L.R. Number 22402 to the intended 4th Defendant. The Counsel submitted that the 1st Defendant which is a cooperative society had been in possession of the suit property and have a counterclaim against the Plaintiff with respect to the suit property, which was also the subject of a public inquiry by the Ndungu Commission of Inquiry. It was further submitted that the 4th Defendant is a necessary party for the hearing of the suit and no prejudice will be suffered by joining him as a party.

Counsel stated that his application was supported by the affidavit of Edwin Njau sworn on 17th October 2012 and all documents filed by the 1st Defendant. The deponent in the said affidavit stated that upon an official search of the suit property dated 3rd September 2012, which was annexed, it was found that the Plaintiff disposed of the suit property on 29th April 2010 to a Mr. George Ngugi Karungo for a sum of Kshs 4,000,000/=, who on 15th December 2010 charged the said property with Equity Bank to secure a loan of Kshs. 12,000,000/=.

The Counsel for the 2nd Defendant did not oppose the application, as well as the Counsel for the 3rd

Defendant was not present in Court. The Court confirmed that there was an affidavit of service sworn by Peter Mburu Waithaka on 13th November 2012 attesting to service upon the 3rd Defendant's Counsel of the hearing notice.

The Plaintiff's Counsel on his part opposed the application for joinder of the intended 4th Defendant. The Counsel submitted that the suit herein was filed by the Plaintiff for mesne profits and trespass against the 1st Defendant and was based on the ground that the 1st Defendant had encroached on the Plaintiff's land by building a milking shed thereon. Further, that after the suit was brought to the court the 1st Defendant filed a counterclaim that the suit property belonged to them and was a public utility plot, and joined the 2nd and 3rd Defendant on this ground.

The Plaintiff's counsel further submitted that the 2nd & 3rd Defendant have filed Defences and disowned the 1st Defendant's claim, and that the suit property has been allocated and is now private property. Counsel also submitted that an injunction sought by the 1st Defendant was denied by the court, and admitted that the suit property was sold to the intended 4th Defendant on 29th April 2010 because there was no injunction stopping the sale of the land. Counsel averred that the joinder would delay the hearing, and in any case if the 1st Defendant were to succeed in its Counterclaim its remedy is in damages.

I have read the pleadings in this suit and also given due consideration to the submissions made by the learned counsels appearing. The Plaintiff in the Plaint dated 13th December 2006 and filed on 20th December 2006 is seeking orders of vacant possession and eviction of the 1st Defendant from the suit property, and also special damages for trespass. The Plaintiff's claim is that it is the registered proprietor of the suit property, and that the 1st Defendant has without its consent entered on the said property and trespassed thereupon by erecting thereon a milk delivery shop/shed. The 1st Defendant in its Amended Defence and Counterclaim dated 24th September 2008 and filed on the same date, on the other hand states that it was allocated plot N0. 76/381/3 in 1994 which plot was later included in the suit property, and took possession immediately. The 1st Defendant further claims that the said plot was fraudulently acquired by the Plaintiff and is seeking orders for adverse possession, or in the alternative of cancellation of the title to the suit property and special damages.

It is apparent from the materials placed before the court and submissions made that the suit property has been sold to one George Ngugi Karungo. Any orders that may ultimately be made in this suit with regard to the suit property will obviously affect the said purchaser, and I have no doubt in my mind that he ought to be joined to these proceedings as a necessary party. I accordingly allow the 1st Defendant's oral application made on 15th November 2012, and hereby order that George Ngugi Karungo be joined to this suit as the 4th Defendant. I will also, in the interests of justice and expeditious disposal of this suit pursuant to sections 1A, 1B and 3A of the Civil Procedure Act and Order 8 Rule 5 of the Civil Procedure Rules, grant leave to the 1st Defendant to file and serve a Further Amended Defence and Counter-claim within fourteen (14) days from the date of delivery of this ruling. The Plaintiff, 2nd and 3rd Defendants are at liberty within a similar period of time from the date of service upon them of the Further Amended Defence and Counter-claim to file Amended Defences or Replies to the Counter-claim. The 4th Defendant may within fourteen (14) days of service upon him of the Further Amended Defence and Counter-claim file his Defence and Reply to the Counter-claim.

In the meantime the *status quo* orders granted herein by Honourable Justice Martha Koome (as she then was) on 1st November 2011 are hereby confirmed, and the *status quo* to be maintained shall be that the Plaintiff and Defendants or their agents or assignees shall not sell, transfer or in any way alienate or dispose of the suit property namely L.R. Number 22402, pending the hearing and determination of the suit filed herein.

The costs of the application shall be in the cause.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this ____11th____ day of ____December____, 2012.

P. NYAMWEYA

JUDGE