



**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.....1<sup>ST</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**KIAMBU MUNICIPAL COUNCIL.....3<sup>RD</sup> DEFENDANT**

**GEORGE NGUGI KARUNGO.....PROPOSED 4<sup>TH</sup> DEFENDANT**

**RULING**

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

The Counsel for the 2<sup>nd</sup> Defendant did not oppose the application, as well as the Counsel for the 3<sup>rd</sup> Defendant was not present in Court. The Court confirmed that there was an affidavit of service sworn by Peter Mburu Waithaka on 13<sup>th</sup> November 2012 attesting to service upon the 3<sup>rd</sup> Defendant's Counsel of the hearing notice.

The Plaintiff's Counsel on his part opposed the application for joinder of the intended 4<sup>th</sup> Defendant. The Counsel submitted that the suit herein was filed by the Plaintiff for mesne profits and trespass against the 1<sup>st</sup> Defendant and was based on the ground that the 1<sup>st</sup> 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 1<sup>st</sup> Defendant filed a counterclaim that the suit property belonged to them and was a public utility plot, and joined the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant on this ground.

The Plaintiff' counsel further submitted that the 2<sup>nd</sup> & 3<sup>rd</sup> Defendant have filed Defences and disowned the 1<sup>st</sup> 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 1<sup>st</sup> Defendant was denied by the court, and admitted that the suit property was sold to the intended 4<sup>th</sup> Defendant on 29<sup>th</sup> 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 1<sup>st</sup> 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 13<sup>th</sup> December 2006 and filed on 20<sup>th</sup> December 2006 is seeking orders of vacant possession and eviction of the 1<sup>st</sup> 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 1<sup>st</sup> Defendant has without its consent entered on the said property and trespassed thereupon by erecting thereon a milk delivery shop/shed. The 1<sup>st</sup> Defendant in its Amended Defence and Counterclaim dated 24<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> Defendant's oral application made on 15<sup>th</sup> November 2012, and hereby order that George Ngugi Karungo be joined to this suit as the 4<sup>th</sup> 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 1<sup>st</sup> 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, 2<sup>nd</sup> and 3<sup>rd</sup> 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 4<sup>th</sup> 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 1<sup>st</sup> 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 \_\_\_\_11<sup>th</sup>\_\_\_\_ day of \_\_\_\_December\_\_\_\_,

2012

**P. NYAMWEYA**  
**JUDGE**