



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.360 OF 2009

JASPA INVESTMENTS
LTD.....PLAINTIFF

VERSUS

PETER MBIYU
KOINANGE.....DEFENDANT

R U L I N G

1. Jaspa Investment Limited who is the plaintiff herein seeks leave of the court to enjoin the Attorney General and Windy Range Agencies Ltd as co-defendants. The plaintiff also seeks leave to amend the plaint so as to bring in his claim against the proposed co-defendants. In addition the applicant seeks an order of maintenance of status quo in regard to the records at the lands registry pertaining to LR No.20920/9 Kiambu (hereinafter referred to as the suit property).

2. The applicant explains through its director James M. Gacucu that the defendant has illegally transferred the suit property to the intended 3rd defendant when he had contracted to sell the suit property to the plaintiff and has received part of the purchase price. The plaintiff therefore wishes to have the intended 3rd defendant joined as a party. The plaintiff also wishes to have the Attorney General joined as a party to the suit on behalf of the Registrar of Titles against whom the plaintiff intends to apply for an order of rectification of title.

3. The defendant objects to the application maintaining that the substantive suit together with the application, are bad in law as Section 6 of the Land Control Act invalidates the suit. This is because there was no consent by the Land Control Board to the sale transaction between the plaintiff and the defendant. Therefore the agreement was null and void.

4. In support of that contention counsel for the defendant cited the following cases:

(i) Zachariah Mugenyu Kaburu vs Joseph Mugenyu Kaburu HCCC (Nrb) No.524 of 2004.

(ii) Wairimu Gitukio Muchunu vs Esther Njambi Kioi HCCC (Nakuru) No.191 of 2004.

(iii) Simon Muthamia Mutie vs Peter Mbithi Kimeu HCCC No.110 of 2002.

(iv) Githu vs Katibi [1990] KLR 634.

5. It was further submitted that the plaintiff lacks capacity in law to bring the suit due to non-compliance with Order III Rule 2 of the Civil Procedure rules, and Section 13A of the Government Proceedings Act, no notice having been exhibited.

6. In response, counsel for the applicant pointed out that under Section 19(3)(b) there is an exception to Section 13A where the Registrar of Titles is sued. As regards the lack of Land Control Board consent, it was argued that it was the responsibility of the respondent to obtain the consent and he cannot rely on his own default to defeat the applicant's suit. It was maintained that Order III Rule 2 of the civil Procedure Rules was complied with as the deponent of the supporting affidavit indicated that he had authority to swear the affidavit.

7. I have carefully considered the application before me. The applicant has given a good reason as to why it is necessary for it to join the intended 2nd and 3rd defendants as party to the suit. In considering the application, it would be premature at this stage for this court to go into the merits of the plaintiff's suit. All that is necessary is for the plaintiff to demonstrate that he has a plausible cause of action and that the amendment is necessary for the purpose of determining the real question in controversy between the parties. This the applicant has done. Indeed, it is not for the defendant to hold brief for the intended defendants.

8. As regards the objections concerning procedural technicalities these have been appropriately responded to by the applicants. In any case, this court is obliged to administer substantial justice and will therefore not be derailed by undue technicalities.

9. The upshot of the above is that I grant prayers (3) and (4) of the chamber summons dated 11th January, 2010. Parties not having addressed me in regard to prayer (4), no orders shall issue in that regard.

10. Costs of the application shall be in the cause.

Dated and delivered this 4th day of February, 2011

H. M. OKWENGU

JUDGE

In the presence of: -

Ndegwa H/B for Kibuthu for the plaintiff

Advocate for the defendant absent

B. Kosgei - Court clerk