



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
(MILIMANI COMMERCIAL & TAX DIVISION)

CIVIL CASE NO. 479 OF 2007

JOHNSON WACHIRA MUGO.....1ST PLAINTIFF
MOSES WANGAI NJOROGE.....2ND PLAINTIFF
ELIZABETH SAVETHI WANGAI.....3RD PLAINTIFF
FLORENCE SOILA NGOSSOR.....4TH PLAINTIFF

VERSUS

SASANET INVESTMENTS CO-OPERATIVE SOCIETY LIMITED.....1ST DEFENDANT
SASANET LIMITED.....2ND DEFENDANT
MICHAEL CHEGE.....3RD DEFENDANT
SAMMY GITAU.....4TH DEFENDANT

AND

**EQUITY BANK LIMITED (UPPERHILL
 BRANCH).....GARNISHEE**

RULING

The applicants through their advocates, Were & Oonge Advocates filed a notice of motion dated 1st April 2010. The same is brought under section 63(e) of the Civil Procedure Act and Order 1 rule 10(2) Order L Rule 1 of the Civil Procedure Rules. The applicant seeks the following orders:

- 1. THAT KENNETH ABEL OTIENO and GRACE MUTHONI OTIENO be enjoined as interested parties herein.**
- 2. THAT and order registered against Flat Number 3 on LR/NO NAIROBI/BLOCK 93/1074 be vacated or set aside.**
- 3. THAT there be leave to apply.**
- 4. THAT the costs of the application be in the cause.**

During the hearing of the application the applicant’s counsel Mr. Koonge submitted that they were relying on the grounds set out in their application and the affidavit of Grace Muthoni. In addition to the above, the learned counsel referred this court to the supporting affidavit of Grace Muthoni which states that she and her husband, own the above aforesaid flats. To prove the above submissions they have even gone ahead and attached the Certificate of Lease. Apart from the above, the learned counsel also submitted that since his clients are not parties to this suit, the earlier orders which had been granted by this court should be vacated.

On the other hand, Mr. Thuita who is appearing for the plaintiffs/respondents has opposed that application. In doing so, he has relied on the grounds of opposition. Besides the above, Mr. Thuita also submitted that this application is fatally defective and that it ought not to be allowed. Further to the above, he also stated that the applicants have admitted that they are not parties to this suit and that they are only intended interested parties. He was of the considered opinion that the applicants must first obtain leave of the court and be enjoined as interested parties before seeking substantive prayers. Apart from the above, he also submitted that prayers No. 2 and 4 cannot be granted with prayer No. 1. It is on the basis of the above that he has urged this court to strike out the application.

Having carefully considered the opposing submissions, it is obvious to this court that the applicants have produced a certificate of lease. A glance at the same clearly shows that they are the registered owners of the Title No. NAIROBI/BLOCK 93/1074 (Flat No. 3). However a basic principle of the law is that it will not be proper for the court to grant substantive prayers in favour of a party who has not even come on record. As a matter of procedure the applicants must first come on record and thereafter make an appropriate application so that this court can address their grievances. In view of the above, the court hereby grants prayer No. 1 and 3 to allow both applicants to be enjoined in this suit within the next 21 days. Due to the above reasons, I hereby decline to grant prayers No. 2 and prayers No. 4. Those are the orders of this court.

MUGA APONDI

JUDGE

Ruling read, signed and delivered in open court in the presence of:

Thuita - Plaintiffs/Respondents' Counsel

Oonge for Interested party

MUGA APONDI

JUDGE

5TH JULY 2010