



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Misc. Appli. 814 of 2005

LOIS SIANOI KONANA.....APPLICANT

V E R S U S

THE PERMANENT SECRETARY MINISTRY

OF LANDS AND HOUSING.....RESPONDENT

AND

CECILIA GACHIRU KIONGO.....INTENDED INTERESTED PARTY

R U L I N G

Before me is an application by way of Notice of Motion dated 26th October, 2007 filed by M/s Ombajo & Company advocates by the intended/interested party named as **CECILIA GACHIRU KIONGO**. It is brought under Order LIII rule 6 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act (Cap. 21). The substantive orders sought in the application are-

2. *The court be pleased to enjoin the applicant*

herein as an interested party to the suit.

3. *Upon granting prayer number 2 above, the court*

be pleased to order that the notice of appointment by the firm of Ombajo & Co. Advocates, Alibhai Shariff HSE, Kimathi Street, 2ND FLOOR P. O. BOX 61136-00200 NAIROBI and the replying affidavit herein be deemed as duly filed upon payment of the requisite court fees.

4. *Upon granting of prayers number 3 above and*

pending the hearing and final determination of the suit herein, the court be pleased to order that Lois Siano Konana the applicant herein do remit the amounts due as rent for the suit premises into a joint fixed deposit account in the name of the applicant and the interested party.

The application has grounds on the face of the Notice of Motion. It is also supported by the affidavit of the intended interested party **CECILIA GACHIRU KIONGO** sworn on 26th October, 2007. In the affidavit, it was deposed that **CECILIA GACHIRU KIONGO** applied for the house in question situated at Mugoya Estate Nairobi under the Civil Servants House Purchase Scheme after houses were advertised

in the local daily newspapers sometimes in 2004. It was also deponed that the intended interested party received a letter of offer for sale of the house dated 15th April, 2005, and paid Kshs.1000/= application fees as required and paid 10% deposit of Kshs.256,000/= and subsequently remitted other amounts to the Ministry of Lands and Housing all totaling Kshs.768,735/= and also insured the premises. That the intended interested party later learnt from the Ministry that one **LOIS SIANOI KONANA**, the applicant, had refused to vacate the premises and filed proceedings in court challenging the sale of the subject house by the Government. The intended interested party therefore was now applying to be joined as a party in these proceedings to canvass the issues affecting her status and interest.

The applicant in the main cause herein, **LOIS SIANOI KONANA** filed a replying affidavit to the application. It was deponed in the affidavit that she was the occupant of the said subject house, and that she was sent an offer vide a letter dated 16th December, 2004, after she had accepted a general civil service circular dated 18th August, 2004 and even paid a deposit of Kshs.320,000/=. It was deponed that the intended interested party did not show when she applied for the house, and that the purported letter of allocation to the intended interested party dated 15th April, 2005 did not show the author of that letter. This affidavit was sworn in opposition to the application

At the hearing of the application, Mrs Ligunya for the intended interested party, informed me that the Attorney-General, though served was not opposing the application. Counsel submitted that the intended interested party wanted to be enjoined as a party in the proceedings herein. She therefore was praying that the court grants prayers (2), (3) and (4). Counsel contended that under Order 53 rule 6 of the Civil Procedure Rules, any person affected or any interested party could be joined by the court at any time. Counsel contended that the intended interested party had a genuine interest in the matter as an innocent purchaser. However, **LOIS**, who is the applicant in the main cause herein had gone to court and obtained orders stopping the sale of the subject house to the intended interested party. There was therefore need to join the intended interested party in the proceedings so that relevant issues could be canvassed. Counsel submitted that the issues raised in the replying affidavit did not address this application, but rather addressed issues in the main application.

Mr. Mwangi Counsel for **LOIS** the applicant, opposed the application. Counsel submitted that the intended interested party had no genuine interest to justify her being joined as a party. The issue before the court in the motion dated 18/5/2005, Counsel argued, was a challenge to the decision of the Permanent Secretary in failing to allocate the subject property to **LOIS** Intended interested party was not a party to that decision. The intended interested party must distinguish between the decision and the house.

Counsel argued that the general circular to Civil Servants gave occupants of the subject houses priority in the sale of houses. The intended interested party did not state that she was a civil servant. Counsel stated that the intended interested party wanted to come into the proceedings and muddle the same. Counsel urged me to dismiss the application.

The learned State Counsel, Mr. Menge, submitted that the respondent did not object to the application.

In response, Mrs Ligunya submitted that Order 53 rule 6 of the Civil Procedure Rules provided that any person who wanted to be heard in opposition to a Judicial Review application could be heard. Therefore, the intended interested party should be joined and heard.

I have considered the application, documents filed and submissions of Counsel before me. The intended interested party wants to be joined as a party to the proceedings. Order 53 rule 6 of the Civil Procedure Rules provides-

6. On the hearing of any such motion as aforesaid, any person who desires to be heard in opposition to the motion and appears to the High Court to be a proper person to be heard shall be heard, notwithstanding that he has not been served with the notice or summons, and shall be liable to costs in the discretion of the court if the order should be made.

From the above provisions of the law, the court has a discretion to allow someone who is not a party, and

even if not served, to be heard in opposition to a motion in Judicial Review proceedings, provided that the court is of the opinion that that person is a proper person to be heard. In my view, the intended interested party herein is a proper person to be heard. She has demonstrated a genuine interest in the subject matter (house) which she claims to have purchased, and paid money for. She wants her position and interest to be canvassed in the proceedings. The person who is purported to have allocated or sold the house (***the Permanent Secretary***) does not oppose her being joined in the proceedings. The objections raised by the applicant appear to go to the merits of the main motion without hearing all interested parties involved. Having found that the intended interested party has a genuine interest to be ventilated upon, in terms of the provisions of Order 53 rule 6, I have to allow her to be heard. I will therefore allow the application to join the intended interested party in these proceedings.

Consequently, I order as follows-

1. ***I allow the intended interested party to be jointed as an interested party in the Judicial Review proceedings herein, and is hereby so joined.***
2. ***The notice of appointment of OMBAJO & Co. ADVOCATES is deemed as properly filed. The applicant or his Counsel will file a response, if any, to the main motion herein within 14 days from today.***
3. ***Prayer 4 of the application herein will await the determination of the main motion.***

It is so ordered.

Dated and delivered at Nairobi this 18th day of June, 2008.

GEORGE DULU

JUDGE

In the presence of-

Mrs Ligunya for intended interested party – absent.

Mr. Menge for respondent – absent.

Mr. Mwangi for applicant- Mr. Nzebe holding brief.

Mwangi Court Clerk