

REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

Civil Appeal 722 of 2006

SARAH WATHITU MBUGUA.....PLAINTIFF

V E R S U S

1. CATHERINE WANJIRU NJOROGE

2. MARGARET GATHONI NGENE

3. DISTRICT LANDS REGISTRAR KIAMBUDEFENDANTS

R U L I N G

This is an application (by chamber summons dated 26th February, 2007) brought by the 2nd Respondent seeking the main order that the 2nd Respondent's name be removed from these proceedings as having been improperly joined. The application is expressed to be brought under Order 1, rule 10 of the Civil Procedure Rules (the Rules) and also under section 3A of the Civil Procedure Act, Cap 21. It is stated in the grounds for the application appearing on the face thereof that the proceedings the subject matter of the appeal was between the Appellant and the 1st Respondent, and that the 2nd Respondent was not a party in those proceedings. It is therefore argued that she cannot be competently joined in the appeal. The application is supported by the affidavit of the 2nd Respondent. I have read the same. That supporting affidavit merely elaborates the grounds for the application.

The Appellant has opposed the application as set out in the replying affidavit sworn by herself and filed on 20th March, 2007. She depones that the 2nd Respondent actively participated in the proceedings before the land registrar. It is further deponed that the 2nd Respondent was a beneficiary of the ruling of the land registrar which is appealed against in this appeal. To the replying affidavit are annexed a number of documents.

In course of arguments it was submitted for the Appellant that the boundary dispute, which was the subject of the proceedings before the land registrar, and the determination thereon, also affected the boundary between the Appellant's and the 2nd Respondent's parcels of land.

I have considered the submissions of the learned counsels appearing. I have also perused all the documents placed before the court. I will not concern myself with the technicalities raised in the counsels' arguments. Suffice it to say that I am satisfied that the 2nd Respondent is a necessary party in this appeal. The determination of the boundary dispute by the land registrar no doubt affected the boundary between the Appellant's and the 2nd Respondent's parcels of land. If this appeal proceeds to hearing any decision made thereon would affect the 2nd Respondent as well as the Appellant. The 2nd Respondent was therefore properly joined in the appeal.

In the circumstances, I will refuse the application. It is hereby dismissed with costs to the Appellant. Orders accordingly.

DATED AT NAIROBI THIS 26TH DAY OF JULY 2007

H. P. G. WAWERU

J U D G E

DELIVERED ON 27TH DAY OF JULY 2007