



**Lutolala v Lepatai; Oketch & 3 others (Interested Parties) (Environment & Land Case 585 of 2017) [2022] KEELC 15017 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15017 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 585 OF 2017  
MN GICHERU, J  
NOVEMBER 23, 2022**

**BETWEEN**

**ARNOLD WABWITO LUTOLALA ..... PLAINTIFF**

**AND**

**PETER SANE LEPATAI ..... DEFENDANT**

**AND**

**PHILIP OUMA OKETCH ..... INTERESTED PARTY**

**GEOFFREY KASINA PESA ..... INTERESTED PARTY**

**ROBERT ARNES OKETCH ..... INTERESTED PARTY**

**JOHN PESA ..... INTERESTED PARTY**

**RULING**

1. This ruling is on the notice of motion dated March 9, 2021. The motion which is brought under section 3A of the *Civil Procedure Act*, order 1, rule 2 *Civil Procedure Rules*, order 26, rule 1 *Civil Procedure Rules*, articles 22 (1), 3 and 40 of the *Constitution* and rule 4 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms), Practice and Procedure Rules 2010* and all the other enabling provisions of law.

The motion seeks one main prayer namely, (3) The lifting of the injunction registered against L R Kajjado/Kaputiei-North/21 or in the alternative an order be issued cancelling and/or withdrawing the inhibitions registered against L R KJD/KAPUTIEI-NORTH/31436 on May 20, 2012 and September 17, 2013 respectively.

2. The application is supported by six grounds and an affidavit sworn by Philip Oketch, first interested party dated March 9, 2021, and five (5) annexures.



The long and short of the entire application is that the interested parties need to have the orders lifted so that they can proceed to have their land that they bought from the defendant transferred to them now that the dispute between the plaintiff and the defendant has been determined.

The determination was that the defendant refunds the purchase price together with interest within 90 days from December 1, 2018.

3. The application is opposed by the plaintiff who has raised a preliminary objection based on three (3) grounds namely-
  - a. This court lacks jurisdiction.
  - b. This suit has been overtaken by events.
  - c. The application herein is an abuse of the court process.
4. Counsel for the interested parties and for the defendant filed written submissions on May 20, 2022 and September 29, 2022. The issues raised therein are as follows.
  - i. When the applicants should have been allowed to form the suit.
  - ii. Whether the injunctive orders should not be set aside.
  - iii. Whether the annexures in support of the motion introduces new issues.
  - iv. Whether the preliminary objection has merit.
  - v. Whether the application is frivolous, vexatious and should be struck out.
5. I have carefully considered the application in its entirety including the affidavit, grounds of opposition, submissions by learned counsel for the parties and the case law cited thereon.

I make the following findings on the issues raised.

Firstly, it is worth noting that all the orders on record were issued pending the hearing and determination of the suit. Now that the suit was determined on December 18, 2018, it goes without saying that the orders lapsed the moment the suit was determined.

Secondly, I allowed the interested parties to join the suit because I was convinced that they were necessary at this late stage because the orders of injunction, thought to be in force, affected them directly.

A question remains to be settled in the suit and it affected those parties. Under order 1, rule 10 (2), Civil Procedure Rules it is provided as follows;

The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, ... and that the name of any person who ought to have been joined, whether as plaintiff or defence, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit be added”.

From the above, it is clear that the power of the court in ordering the inclusion or exclusion of a party is unfettered.

In this case the interested parties had an issue that was not settled, namely, the orders issued at the interlocutory stage. They had the right to join this suit. Filing a new suit would have resulted in a multiplicity of suits which is to be discouraged. It would defeat the overriding objective of civil



litigation found in Section 1A of the Civil Procedure Act to file a new suit when the oppressive orders were issued in this case.

On the second issue, I find that the injunctive orders must be set aside. They no longer serve any purpose and they are oppressive to the interested party. They were issued for the benefit of the plaintiff who should have no further interest in the suit having had a decree issued in his favour. The record shows that execution of the decree may have taken place already.

On the third issue, the annexures in support of the motion do not introduce new issues. The suit having been decided, no new issues can arise. The annexures are in fact part of the post judgment procedures.

On the fourth issue, I find that the preliminary objection has no merit at all because it is being raised by a party who has no more interest in the suit land as he enjoys a money decree.

Finally on the final issue, it is clear that the application is neither frivolous nor vexatious.

For the above stated reasons, the motion dated March 9, 2021 is allowed in its entirety including costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2022.**

**M N GICHERU**

**JUDGE**

