



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Civil Misc. Appli. 152 of 2006

SUSAN MURUGA M'RIMBERIA.....
APPLICANT

V E R S U S

DOMINIC KIRAMUNYA KABURANGA.....1ST
RESPONDENT

DOUGLAS NTARANGWI M'MURIITHI.....2ND
RESPONDENT

AYUB M'IBIRI ALIAS M'IBIRI M'MWITARI.....1ST INTERESTED
PARTY

HELLEN KARIMI M'TUERANDU.....2ND INTERESTED
PARTY

FREDRICK GITUMA M'RUTERE.....3RD INTERESTED
PARTY

JOHN MURITHI M'TUERANDU.....4TH INTERESTED
PARTY

STELLA KARAMBU M'TUERANDU.....5TH INTERESTED
PARTY

R U L I N G

1. There are two Applications before me for consideration; the first, dated 15.1.2007 seeks an order that one Ayub M'Ibiri M'Mwitari be joined as a party to the proceedings herein. It is anchored on Order 1 Rules 10(1) and (2) of the Civil Procedure Rules.

2. In his supporting Affidavit sworn on 15.1.2007 Ayub aforesaid says that he is interested in and is affected by these proceedings because the subject is land reference No. Kirua/Ruiri/878; and that on 30.7.1981 he obtained judgment in Meru RMCC No. 382/1980 and the order was that the 1st Respondent would transfer 5 acres out of that parcel of land to him. That subsequently in HC Misc Civil Application No. 449/1981 the order in Meru RMCC No. 382/1980 was quashed and an order and an order made that he (Ayub) would only be entitled to 46/100 or 46% of that land. That since none of the orders has been actualized if proceedings are finalized without his participation, then he risks lose of his share of the disputed land.
3. The second Application is dated 10.4.2007 and seeks orders that Hellen Karimbi M'Tuerandu, Fredrick Gituma M'Rutere, John Murimi M'Tuerandu and Stella Karambu M'Tuerandu be joined as interested parties to these proceedings. Their interest is that they are wife and children of the 1st Respondent and that they all live on the suit land and have extensively developed it, separately. That the 1st Respondent holds the land in trust for them and that when he purported to sell part of it, he never sought their consent to do so. That the land is family land and the 1st Respondent cannot dispose of it without recourse to them as his family.
4. The only serious response to both Applications is contained in a Replying Affidavit sworn on 16.5.2007 by Dominic Kiramunya Kaburung'a, the 1st Respondent. In it he depones that the persons who claim to be his wife and children (2nd-5th interested parties) are acting at the behest of the 2nd Respondent, Douglas Ntarangwi M'Murithi in a bid to frustrate transfer of part of the suit land to the original Applicant in these proceedings. Susan Muruga M'Rimberia. He adds that the 2nd interested party although initially his wife, left him in 1969 together with the 4th and 5th Interested Parties and returned after 24 years and with the others are visiting hostility on him. He also depones that Ayub has no claim to the land and has no interest to protect in the proceedings.
5. The Original Applicant and the 2nd Respondent had little to say on the Applications but my view is that whatever their response and that of the 1st Respondent, clearly I am inclined to allow the two Applications; I say so respectfully because as regards Ayub M'Ibiri, prima facie if he has a court order entitling him to a share of the disputed land, then he must be heard so that no adverse orders can be made against him. If in the end, his claim is baseless, let it be dismissed after he has put it across. This is a reasonable approach noting that the Original Applicant and the 1st Respondent are acting clearly in unison (see the record of proceedings when the Application were argued) and if that is the approach they are taking, other parties with interest in the land may be unduly prejudiced.
6. Regarding the 2nd – 5th Interested parties, their interest in the land in dispute is as family members and alleged beneficiaries of a trust bestowed upon the 1st Respondent. They also say that they live on the suit land and have intensively developed it. Granted, the claim may well be pursued in a separate suit but I have seen that this dispute has been in existence since 1976 or 1978 and it would be best that all competing claims, whatever their nature, are addressed simultaneously. I say this guardedly and alive to the fact that the original Application in these proceedings may itself not create room for a comprehensive determination of all matters arising but notwithstanding those sentiments I still see value and good reason in allowing joinder of the 2nd – 5th Interested

parties.

7. For the above reasons therefore I will allow the Application dated 15.1.2007 in prayer No. 1 only and prayer 2 thereof may be fixed for hearing if the Applicant Ayub M'Ibiri so wishes. The Application dated 10.4.2007 is also allowed in terms of prayer (a) only.

8. Costs of both Application shall be in the cause.

Dated, signed and delivered in open court at Meru this 3RD Day of July 2007.

ISAAC LENAOLA

JUDGE

In the presence

Mr. Omayo holding brief for Mr. Gichunge Advocate for the 1st Interested party

Mr. Rimita Advocate for the 2nd –5th Interested Parties

Original Applicant Present

1st Respondent Present

2nd Respondent Absent

ISAAC LENAOLA

JUDGE