



Ngumbao & 2 others v District Land Registrar Uasin Gishu & another; Wainaina (Interested Party) (Environment & Land Case 74 of 2015) [2022] KEELC 15390 (KLR) (20 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15390 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 74 OF 2015
EO OBAGA, J
DECEMBER 20, 2022**

BETWEEN

**DERICK KATANA NGUMBAO 1ST PLAINTIFF
MERCYLINE USHINDE NZARO 2ND PLAINTIFF
MAIREEN DMA NGUMBAO (SUING AS THE ADMINISTRATOR OF THE
LATE PATRICK NGUMBA MWENI (DECEASED) 3RD PLAINTIFF**

AND

**DISTRICT LAND REGISTRAR UASIN GISHU 1ST DEFENDANT
ATTORNEY GENERAL 2ND DEFENDANT**

AND

DANIEL MURIGI WAINAINA INTERESTED PARTY

RULING

1. This is a ruling in respect of Notice of motion dated March 17, 2021 in which the Interested party/Applicant seeks to be joined in those proceedings as a Defendant rather than an interested party. The Applicant also seeks leave to be allowed to file a defence and raise a counter-claim.
2. The Applicant had applied to be joined in these proceedings as an interested party *vide* a notice of motion dated December 20, 2018. This application was allowed on February 5, 2019. The Applicant was then joined as an interested party. He now wants to change that status to that of a Defendant.
3. The reason for seeking to be joined as a Defendant is that he had been allocated plot 154 measuring 4.1 hectares. One Julius Chepsoi Chepkieny was also allocated plot 153. The plots later changed to new numbers. When a Registry Index Map (RM) was being prepared, those preparing it erroneously used



the old numbers. This resulted in plot Nos 153 and 154 being amalgamated and title given to Julius Chepsoi Chepkieny.

4. When the anomaly was detected, Julius Chepsoi Chepkieny was asked to surrender the title as the two plots acreage was 6.1 hectares. Instead of Julius Chepsoi Chepkieny surrendering the title, he quickly sold the land to Judith Amakinata Ekiring who in turn sold it to Patrick Ngumbao Mweni now deceased who then proceeded to subdivide the land into several subdivisions. The Land Registrar placed a restriction on the title held by the deceased. This is what culminated into the filing of this suit which seeks the removal of the restriction.
5. The Applicant contends that if his status is not changed from that of interested party to that of a Defendant, he will be prejudiced as the role of an interested party in a case is passive but that of a Defendant is active and a counter-claim can be founded on it.
6. The Deceased who had by then not died filed a replying affidavit sworn on May 13, 2021 opposing the Applicants application. The deceased then contended that when the Applicant was seeking to be joined as an interested party, he knew that the role of an interested party in a suit is passive and cannot result in substantive reliefs but despite this, he went ahead to be joined as an interested party.
7. The deceased then contended that he had no claim against the Applicant as he had no privity of contract with him. He contended that the Applicant was out to delay the conclusion of this suit by filing frivolous applications. He stated that he was not bound to inquire into how the person from whom he purchased the land obtained it. He further stated that the Applicant's suit is statute barred as he had been enjoying the suit property since 2006.
8. In a replying affidavit sworn on May 16, 2022 by one of the administrators of the estate of the deceased, the Plaintiffs/Respondent's contend that the Applicant's contention that plot 153 and 154 were amalgamated is not true as the two plots fall in different places on the map. The Respondents contend that the Applicant's application is frivolous and is meant to delay the finalization of this suit and that in any case, the Respondent have no claim against the Applicant.
9. In a further affidavit sworn by the Applicant on July 6, 2022, the Applicant contends that his application for joinder is not a waste of judicial time as alleged by the Respondents but is borne out of the desire to urge his claim as a Defendant rather than an interested party which is passive. The Applicant states that records held in the settlement office show that the title which was issued to Julius Chepsoi Chepkieny was erroneously given. He therefore states that his application is merited and should be allowed.
10. Parties were directed to file written submissions. The Respondents filed their submissions on June 23, 2022. The Applicant did not file any submissions and if any were filed, then they are not in the court file. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the Respondents submissions. The only issues for determination are firstly whether the Applicant should be allowed to change his status from interested party to a Defendant. Secondly, whether the Applicant should be allowed to file defence and raise a counter-claim.
11. On the first issue, it is clear that the Applicant had been allotted plot 154. It is also clear that there was erroneous amalgamation of plot 154 which was erroneously given to Julius Chesoi Chepkieny. This fact has been confirmed by correspondence from the Land Adjudication and Settlement Officers. It is therefore necessary that the status of the Applicant as an interested party be converted from that position to that of a Defendant because in law, an interested party's participation in a suit is passive in nature. An interested party cannot be granted substantive reliefs.



12. On the second issue, it goes without saying that as the Applicant's application for change of status has been allowed, he should be allowed to file a defence and raise a counter-claim. This is the best way he will participate in these proceedings.
13. Before I give final orders in this matter I must point out that there were no orders given by court on September 20, 2018 capable of being set aside or varied. The orders of court were given on February 5, 2019. Equally, the Applicant cannot be joined as a third Defendant as sought. This is because there is already a third Defendant who was joined in these proceedings on May 21, 2018 that is the County Land Adjudication and Settlement Officer –Uasin Gishu. The Applicant can only therefore be joined as a fourth Defendant.
14. In the final analysis, I allow the conversion of the interested party to a Defendant. The Applicant is therefore joined in these proceedings as a fourth Defendant. The Applicant is allowed to file and serve his defence and counter claim within 21 days from the date hereof. All pleadings should be served upon the added parties only if that had not been done before. The costs of this application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF DECEMBER, 2022.

E O OBAGA

JUDGE

In the virtual absence of parties who were aware of the time and delivery of ruling.

Court Assistant –Albert

E O. OBAGA

JUDGE

