



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC SUIT NO. 22 OF 2019**

**AMARJIT SINGH BRAR.....1<sup>ST</sup> PLAINTIFF**

**TEJPAL SINGH BRAR.....2<sup>ND</sup> PLAINTIFF**

**AMRIT KAUR BRAR (Suing as Administrator of the Estate**

**of Tejparkash Singh Brar.....3<sup>RD</sup> PLAINTIFF**

**-VERSUS-**

**FREDRICK OTIENO OYUGI.....DEFENDANT**

**AND**

**ZACHARY ODHIAMBO ANGANYA.....PROPOSED 1<sup>ST</sup> INTERESTED PARTY**

**HEZEKIAH OMONDI ADALA.....PROPOSED 2<sup>ND</sup> INTERESTED PARTY**

**PETER UMARA MARENYA.....PROPOSED 3<sup>RD</sup> INTERESTED PARTY**

**SYLVESTER OTIENO ABUODHA.....PROPOSED 4<sup>TH</sup> INTERESTED PARTY**

**PHILIP OTIENO ABUOR.....PROPOSED 5<sup>TH</sup> INTERESTED PARTY**

**MODERCAI KERE OMENDA.....PROPOSED 6<sup>TH</sup> INTERESTED PARTY**

**ROBERT OUKO OJUANG.....PROPOSED 7<sup>TH</sup> INTERESTED PARTY**

**JOAB JUMA PAMBA.....PROPOSED 8<sup>TH</sup> INTERESTED PARTY**

**NICHOLAS ALFRED WAMBYAKALEY.....PROPOSED 9<sup>TH</sup> INTERESTED PARTY**

**JAMES ODHIAMBO OLELA.....PROPOSED 10<sup>TH</sup> INTERESTED PARTY**

**KIBOS DEVELOPMENT CO. LTD.....PROPOSED 11<sup>TH</sup> INTERESTED PARTY**

**RULING**

This is an application by the proposed 1<sup>st</sup> to 11<sup>th</sup> interested persons. They seek to be enjoined as interested persons and be allowed to file necessary pleadings.

The application is premised on grounds that the proposed interested parties have an interest in the suit property as the defendant had entered into sale agreements for sale of the suit property to the proposed interested parties and proposed interested parties contributed to the purchase price and deposit currently held by the plaintiff/vendor. The plaintiff/vendor had at all times been aware of the presence and participation of the proposed interested parties and the arrangement that the defendant had with the proposed interested parties.

The deposit funds that are currently being held by the plaintiff/vendor were withdrawn and paid from an account set up by the proposed interested parties.

That the structures put up by the defendant were to secure the property and at all times the plaintiff/vendor was aware of the same.

That the proposed interested parties are ready and have always been ready and willing to pay the balance but noticed that the plaintiff/vendor had developed cold feet in their agreement with the defendant.

That enjoining the proposed interested parties to this suit will assist this court come into a just determination of the issues under dispute and an amicable settlement thereof.

Unless the present application is allowed there is a real and present danger that the proposed interested parties will be locked out of the present proceedings and the court will not have the benefit of getting a full picture of the circumstances that led to the present impasse.

*Order 1 Rule 10(2) of the Civil Procedure Rules provides that:-*

*“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, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”*

In this matter, the interested parties did not have any agreements with the plaintiff and therefore there was no privity of contract.

Privity of contract implies that one cannot either enforce the benefit of or be liable for any obligation under a **contract** to which he is not a party. The underlying premise is that only parties to a **contract** can sue or be sued under it.

There being no privity of contract between the interested parties and the plaintiff, it will not be prudent to enjoin the interested parties as the plaintiff has no claim against the interested parties. The application is dismissed with costs.

**DATED AT KISUMU THIS 21<sup>ST</sup> DAY OF JANUARY 2021**

**ANTONY OMBWAYO**

**JUDGE**

**This Judgment has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2019.**

**ANTONY OMBWAYO**

**JUDGE**