



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT MOMBASA**

**ELC NO. 41 OF 2018**

**JOSEPH GATHITU MUKOMA .....PLAINTIFF**

**VERSUS**

**KABU MUMBA MUDACHI..... 1<sup>ST</sup> DEFENDANT**

**GABRIEL WANDERA.....2<sup>ND</sup> DEFENDANT**

**JULIUS OKUMU.....3<sup>RD</sup> DEFENDANT**

**RULING**

**(On application dated 5 October 2020)**

*(Application by a person to be enjoined as interested party; claim by plaintiff seeking to restrain the defendants from land measuring 5 acres which he claims to have purchased from the applicant; applicant being the person that the plaintiff alleges to have bought the land from; applicant seeking to be enjoined to the case to shed light on what he sold to the plaintiff; applicant qualifying as a witness but not interested party as he is not making any claim over the land in dispute; application dismissed)*

1. This ruling is in respect of the application dated 5 October 2020 filed by one Shehi Murisa Kumbi, who wants to be enjoined in this suit as an interested party.

2. The plaintiff filed this suit claiming to own 5.4 acres of the land parcel LR No. 830/Section II/Mainland North. He averred to have purchased the same from Sammy Shehi Murissa Kumbi (apparently the applicant herein). The plaintiff sued the defendants for interfering with the portion that he claims to have purchased and he wants them permanently restrained from it.

3. In this application, Mr. Kumbi wants to be enjoined as an interested party and I can see that in his affidavit, he claims to have sold two pieces of land measuring 40X70 feet to the plaintiff and not the 5 acres as alleged by the plaintiff in his plaint. He asserts that as the person who sold land to the plaintiff his input is of paramount importance hence the need to be enjoined as an interested party.

4. The plaintiff has responded by asserting that he bought 5.4 acres from the applicant. He has further pointed out that the applicant himself wrote a witness statement in favour of his (plaintiff's) case where he stated that he has sold 5.4 acres to the plaintiff. He has annexed the witness statement. He has further contended that the applicant has not demonstrated a direct and substantial interest in this case as the orders sought in the suit will not legally affect the interest of the applicant.

5. I have considered the application. What the applicant is saying is that he wants to be enjoined to this suit so that he can shed light on the transaction that he had with the plaintiff. He wants to say that he sold to the plaintiff two plots of 40X70 feet and not 5 acres as the plaintiff alleges. To me, the applicant at most can qualify to be a witness but not an interested party. He certainly does not allege in this application that he is claiming any portion of the 5.4 acres that the plaintiff claims to have purchased from him. Probably if he were, I would have considered whether he qualifies to be an interested party. It is certainly not necessary for the applicant to be an interested party so that he can come to court and describe what he sold to the plaintiff. That he can say as a witness.

6. I am not therefore persuaded as to the merits of this application and the same is dismissed with costs.

7. It is so ordered.

**DATED AND DELIVERED THIS 11 DAY OF FEBRUARY 2021.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**