



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Raymark Limited v Ouma & 10 others (Environment & Land Case E45 of 2021) [2023] KEELC 15860 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 15860 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E45 OF 2021  
FM NJOROGE, J  
MARCH 2, 2023**

**BETWEEN**

**RAYMARK LIMITED ..... PLAINTIFF**

**AND**

**RAYMOND OCHIENG OUMA ..... 1<sup>ST</sup> DEFENDANT**

**EVANRAY COMMERCIAL AGENCIES ..... 2<sup>ND</sup> DEFENDANT**

**NAKURU DISTRICT LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**JAMES MWANGI GATITU ..... 4<sup>TH</sup> DEFENDANT**

**GEORGE KINUTHIA NJUGUNA ..... 5<sup>TH</sup> DEFENDANT**

**ALEX WAINAINA HINGA ..... 6<sup>TH</sup> DEFENDANT**

**DAVID NJENGA IYAI ..... 7<sup>TH</sup> DEFENDANT**

**FREDRICK MWANGI MBUTHIA ..... 8<sup>TH</sup> DEFENDANT**

**SIMON NJUGUNA MWANGI ..... 9<sup>TH</sup> DEFENDANT**

**ALEX WAINAINA HINGA ..... 10<sup>TH</sup> DEFENDANT**

**GEORGE KINUTHIA NJUGUNA ..... 11<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed Notice of Motion dated 26/4/2022 seeking the following orders:
  - a. ...spent.
  - b. That the third party be enjoined in these proceedings for purposes of this application.



- c. That the Third Party be directed to open books of account and account statement and supply a certified copy thereof to the defendant/applicants herein for bank account number 1109585942 in the name of the plaintiff.
  - d. That costs of this application be provided for.
2. The application is premised on the grounds that the defendants claim to be the lawful agents of the plaintiff for the purposes of the sale of the suit land; that for purposes of accounting and records the plaintiff opened an account at the Kenya commercial bank whose number is given in the application; that the defendants/applicants were not signatories to the account; that the plaintiff operated the account without the defendant's control or knowledge and did not render an account thereof; that the sum deposited by the defendants in the said account is approximately Kshs 164,167,500/=; that the agent principal relationship has ended and the plaintiff has declined to render accounts and acknowledge the sums received from the defendants and the 3<sup>rd</sup> party has the records relating thereto and that the plaintiff has despite request by the defendants failed to render accounts or supply a copy of the account statement; the defendants aver that in the interests of justice the records filed by them be adopted as the true evidence regarding such deposits in the absence of any disclosure by the plaintiff and the intended third party. The schedule of the amounts said to have been banked into that account are annexed to the supporting affidavit.
  3. However, the plaintiff has through its general manager one Joseph Njore Karanja filed a replying affidavit dated 16/5/22 in opposition to the application. In that affidavit he has stated that the matter before court is only in respect of a specific parcel of land that is Solai /Ndugiri/Block 10/80 (Olbonata) that the applicant is only expected to demonstrate that they legally purchased the land parcel; that formal termination of the relationship between the plaintiff and the applicants is not proof of payment; that the applicants have not attached any evidence of payment for the transaction; that the issue of unsettled purchasers who purchased directly from the plaintiff does not arise in the present suit; that a request for the information was made to the plaintiff but it could not be complied with due to ambiguity; that the request made of the proposed interested party is for 9 years yet only a single transaction is the subject of the present suit and that no valid payment or transfer documents have been exhibited in the application.
  4. The applicants also filed a Supplementary Affidavit dated 17/2/2023 stating that all banking slips were delivered to the plaintiff's managers and that none of the 250 purchasers settled on the land remain with even a copy of the deposit slips.
  5. I have examined the plaint in the present matter. The plaintiff claims that it engaged the applicants to amalgamate and subdivide two parcels of land and after that was accomplished the applicants fraudulently transferred to the 2<sup>nd</sup> applicant one of the resultant subdivisions number Solai /Ndugiri/Block 10/80 (Olbonata) and subsequently disposed of the parcel to unsuspecting buyers who are now demanding title deeds from the plaintiff. He seeks cancellation of the title held in the name of the 2<sup>nd</sup> applicant.
  6. I do not find any request to the plaintiff attached to the application indicating that the plaintiff has declined to avail the records or admit or deny the data supplied by the applicants with regard to a specific subdivision by the identification reference Solai Ndugiri Block 10/80 (Olbonata). I also find the data supplied by the applicants in their application as to purported payments made to the plaintiff's purported stated coount to be vague and to refer to a parcel of land only referred to as "Block 10."
  7. If the 2<sup>nd</sup> defendant in the present case was a purchaser for value, it needs documents to establish that it indeed purchased the plot in question and hence justify transfer and registration of title in its name.



It is not usual for a purchaser to lack even a scrap of paper evidencing sale to it of real property worth millions. It is even more unusual that of 250 plus persons settled on the suit land, not even one of them has even a copy of a deposit receipt to show they put money into the mentioned account as alleged in paragraph 8 of the Supplementary Affidavit dated 17/2/2023. There are no copies of deposit receipts exhibited which could suggest that any cash or cheque was deposited into the account mentioned. It would be natural for a purchaser to keep such records and produce them when need arises.

8. There is no defence of the 1<sup>st</sup> and 2<sup>nd</sup> defendants on the record. It is even perplexing as to what underpinnings the application at hand is purported to be brought without such a crucial pleading having been filed.
9. In the ruling in this case dated 26/9/2022 I set out the principles to be considered for the joinder of an interested party. I considered the provisions of Order 1 Rule 10(2) and the following decisions: *Communications Commission of Kenya & 4 Others Vs Royal Media Services Ltd & 7 others* 2014 eKLR; *Skov Estate Ltd & 5 Others V Agricultural Development Corporation & Another* 2015 eKLR and *Cyrus Wamboka Nyaga Njue V Lucy Kanyua Nyamu* 2019 eKLR. Applying those principles to the present application, I find that the Kenya Commercial Bank is not an interested party in this case and I dismiss the application dated 26/4/2022 with costs. The parties shall appear before this court on the 15/3/2023 to fix a hearing date for the main suit. Parties should note that the hearing date will be issued on a priority basis.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 2<sup>ND</sup> DAY OF MARCH, 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

