



Mukami v Mwongo; Muthamia (Interested Party) (Environmental and Land Originating Summons 48 of 2013) [2023] KEELC 19865 (KLR) (20 September 2023) (Ruling)

Neutral citation: [2023] KEELC 19865 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 48 OF 2013
CK YANO, J
SEPTEMBER 20, 2023**

BETWEEN

JOYCE MUKAMI PLAINTIFF

AND

CYPRIANO KIMATHI MWONGO DEFENDANT

AND

SIMON AMOS MUTHAMIA INTERESTED PARTY

RULING

1. Before me for determination is the notice of motion dated October 25, 2022 brought pursuant to section 1A, 1B and 3A of the *Civil Procedure Act* and Order 42 rule 6 of the *Civil Procedure Rules* and any other enabling laws by the applicant seeking for orders –;
 - a. Spent
 - b. That this honourable court be pleased to enjoin the applicant in this case as an interested party.
 - c. That this honourable court be pleased to determine between the plaintiff and the applicant who is entitled to land Parcel No. Nkuene/L Mikumbune/622.
 - d. That this honourable court be pleased to lift temporary orders of inhibition placed over land parcel No. Nkuene/Lower Mikumbune/622.
 - e. That costs of this application be provided for.
2. The application is supported by the affidavit of Simon Amos Muthamia and is premised on the grounds –;



- i. That the applicant is the purchaser of land parcel No. Nkuene/LowerMikumbune/622 from the defendant herein having purchased the same from the defendant herein on February 9, 2004 and has paid the full purchase price of Kshs. 3,950,000/=.
 - ii. That the applicant has sued the defendant in Nkubu ELC CASE No. 64 of 2019 and judgment entered in his favour.
 - iii. That the applicant is desirous of having the land transferred into his names.
 - iv. That execution of the Nkubu case can only be done upon hearing and determination of this application
 - v. That the court ought to determine the rights of the applicant and the plaintiff herein.
 - vi. That the applicant and the plaintiff have paid their money to the applicant hence his creditors and the court ought to determine who lies first in line.
 - vii. That the application ought to be allowed.
 - viii. That it is only fair, just and equitable this application is allowed.
3. In his supporting affidavit, Simon Amos Muthamia, the applicant herein has annexed a copy of the sale agreement and copy of decree in Nkubu ELC case No. 64 of 2019.
 4. The plaintiff/respondent raised a preliminary objection dated November 11, 2022 on the grounds that the application is incurably defective, bad in law and an abuse of the court process, that the application does not raise any cause of action between the applicant and the plaintiff to be adjudicated by this Honourable court in this matter and that the application offends Order 1 Rule 1 and 10 of the Civil Procedure Rules and relied in the case of Rehema Ribuni & 3 others v Mohammed Iqbal Karim & 3 others [2018] eKLR.
 5. The plaintiff also filed a replying affidavit dated October 11, 2022 wherein she stated that the matter herein had long been concluded between her and the defendant and what is remaining is the implementation of the court's judgment/decree dated May 31, 2016. She has annexed a copy of the court order issued on July 18, 2015 marked "JM1."
 6. The plaintiff deponed that the applicant is a stranger to her and that she has never had any transaction with him regarding the subject matter herein LR No. Nkuene/L. Mikumbune/622. That there is no cause of action between her and the interested party/applicant to be adjudicated by the court in this matter.
 7. The plaintiff averred that the applicant's application is disruptive, drawn in bad faith and in conspiracy with the defendant to delay this matter. That the applicant's application is not anchored in law and it is brought under Order 42 Rule 6 for stay in case of appeal despite the fact that there is no appeal pending between her and the defendant.
 8. The plaintiff averred that she is in possession and utilizing her portion of the land since the year 2004 and has never heard of the applicant claiming the land.
 9. The application was canvassed by way of written submissions. The applicant however, did not file submissions within the timelines granted by the court. The respondent filed her submissions dated June 5, 2023.



ANALYSIS AND DETERMINATION

10. I have considered the application, the preliminary objection, the affidavits in support and against as well as the submissions. The issue that crystalizes for determination are twofold. The first is whether the interested party should be joined to these proceedings and whether the court should lift the orders of inhibition placed over land Parcel No. Nkuene/L-Mikumbune/622.
11. Regarding the first issue, joinder of parties is governed by Order 1 of the *Civil Procedure Rules*. Rule 10 (2) provides as follows-;

“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 ben 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.”
12. It is clear that the above provision of law empowers the court to join a party to a suit at any stage of the proceedings on such terms as may appear to the court to be just. The court will therefore join a party into a suit where it deems the presence of that party to be necessary in enabling the court to effectually and completely adjudicate upon and settle all questions involved in the suit.
13. This suit was commenced by the plaintiff vide an originating summons dated 8th February, 2013 seeking inter alia, extension of time to apply for consent of the land control Board for subdivision and transfer of 0.20 Hectares or ½ acre from L.R No. Nkuene/Lower-mikumbune/622 as well as an order of inhibition over the said land. The defendant opposed the application. The matter was determined by the court (Njoroge J) and by a judgment dated 31st May 2016 granted the following orders-;
 - “ 1. Time is extended for the applicant to apply for consent of the land control Board for sub-division and transfer to the plaintiff, Joyce Mukami of 0.20 Hectares or ½ acre from L.R No. Nkuene/Lower- Mikumbune 622.
 2. That the balance of the purchase price being the sum of Kshs.85,465/= be paid to the defendant through the firm of L. Kimathi Kiara & Co his advocates.
 3. Upon satisfying himself that the balance of the purchase price has been paid to the defendant as ordered in (2) above, this court’s Executive Officer to execute all relevant documents to facilitate implementation of order (1) above, including transfer to the plaintiff of the apposite parcel of land.
 4. The order of inhibition already registered against L.R no. Nkuene/Lower Mikumbune/622 not to be removed unless for the purposes of implementing the orders issued by this court herein.
 5. Costs are awarded to the plaintiff”.
14. The record indicates that an application to review the said judgment was dismissed by the court on May 18, 2022. What is pending therefore is the implementation of the judgment herein.
15. The applicant herein alleges that he purchased the suit land from the defendant on February 9, 2004. The applicant further states that he has sued the defendant in Nkubu ELC Case No. 64 of 2019 where judgment was entered in his favour. In this case, there was no remedy that the plaintiff was seeking



against the applicant herein. In his application, the applicant seems to bring in issues that relate to him and the defendant. I am aware that the court has wide discretion to join a party whose presence before the court is necessary to enable the court effectually and completely adjudicate upon the matter and settle all questions in the suit. I do not however think that in the present suit that the applicant would be a necessary party to be enjoined considering that the matter has since been determined and what is only pending is the implementation of the orders issued by the court in the judgment delivered herein on May 31, 2016. As stated, an application to review that judgment was also dismissed. Therefore, there is nothing pending for determination in this suit other than execution of the orders already in force. I note that the applicant has indicated that he already has a decree in his favour in Nkubu ELC CASE no. 64 of 2019. He can pursue his interests in that other case.

16. Even though the applicant has demonstrated that he may have an interest in the subject matter of this suit, I am not persuaded that his joinder at this late stage of the proceedings would serve the interest of justice. Consequently, I find no merit in the application for joinder and I reject it. In this regard, I am guided by the Supreme Court decision in the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited* [2014] eKRL in declining a similar application for joinder of an interested party and held:-

“The applicant now seeks to be enjoined in this matter, even though it was neither a party at the High Court nor at the court of Appeal. The applicant has not demonstrated how the ends of justice would better be served by enjoining it in the appeal...

We cannot exercise our discretion to enjoin a party that disguises itself as an interested party, while in actual fact merely seeking to institute fresh cause.”

17. With regard to the second issue, the court notes that in the judgment herein dated 31st May, 2016, the court ordered that the inhibition already registered against the suit property should not be removed unless for purposes of implementing the orders issued by the court. I cannot therefore issue orders that will be contrary to those already issued by another court of concurrent jurisdiction. I am therefore reluctant to lift the said inhibition unless for purposes of implementing the orders issued by the court.
18. Consequently, I find no merit in the notice of motion dated October 25, 2022 and the same is hereby dismissed with costs to the plaintiff.
19. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 20TH DAY OF SEPTEMBER, 2023.

C.K YANO

JUDGE

