



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LANDS COURT AT NAROK**

**ELC CASE NO. 5 OF 2018**

**ABDI NASIR SHEIKH OSMAN.....PLAINTIFF /APPLICANT**

**versus**

**NAROK COUNTY GOVERNMENT.....DEFENDANT RESPONDENT**

**AND**

**ABDI MOHAMED YUSUF .....INTERESTED PARTY**

**RULING**

The proposed interested party had by a Notice of Motion dated **18<sup>th</sup> June, 2020** sought for the following orders:-

- 1) Spent;**
- 2) That the Applicant and interested party herein be enjoined in the suit herein;**
- 3) That pending the hearing and determination of this suit herein the honourable Court be pleased to stay Narok CMCC No. 202 of 2014;**
- 4) That the costs of the Application be provided for.**

The Application was based on the grounds that the Applicant / proposed Interested Party is currently embroiled in a boundary dispute with the Plaintiff / Applicant herein **Narok CMCC No. 202 of 2014** with regard to **Plot No. 298 Block 4 and LR No. Narok / Township / 375** and he that states that he wishes to be enjoined in the suit to enable him bring before the court certain matters that are material to the suit herein. The Application was further supported by the Affidavit of **Abdi Mohammed Yusuf** in which he deposed that he is the registered owner of **Plot No. 298 Block 4** situated within Narok Town. He contended that the Plaintiff in the suit had filed **Narok CMCC No. 202 of 2014** against him in which he is the Defendant and that he further found out that the plaintiff herein instituted the instant suit against the **Narok County Government** seeking declaration orders that if granted will adversely affect him and make the suit before the Magistrate's Court an exercise in futility. Annexed to the said Affidavit, a Letter of Plot allocation, A consent order by the parties in Narok CMCC No. 202 of 2014 directed at the Land Surveyor Narok to visit **Plot No. 298 Block 4** and **Plot No. Narok Township 378** with a view to determine the boundaries of the two plots.

The Plaintiff/ Respondents though served with the Applicant and seeking the hearing of the court has failed to file any response to the Application. The Defendant at intimated to the court that they will not opposes the Applicant and will not file any response. On 9<sup>th</sup> March, 2021 despite protested by the proposed Interested Party the Plaintiff was granted the last chance to file his Replying Affidavit or grounds of opposing to the Application which at the time of writing this Ruling he has failed to do.

I have considered the Application before, the Affidavit in support thereof and the submissions filed by counsel for the proposed interested party. In the Application, the proposed interested party seeks to be enjoined to the instituted suit as an interested party staking his claim on the ground that there exists another suit before the magistrate's court being **Narok CMCC No. 202 of 2014** in which the plaintiff has sued the defendant on the basis that he is claiming part of his plot which matter is still pending before court. The Applicant stated that he was not aware of the existence of the instant at the ELC Court until recently and is thus apprehensive if not enjoined as an interested party order that may be made will affect him adversely.

**Order 1 Rule 10 (2)** of the suit procedure Rules provides that circumstances under which a court may Order a party to be enjoined in a suit. Order 1 Rule 10

**“Court may at any stage of the process during either upon or without the Application of either party, and on such terms**

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

With regard to the instant Application the proposed interested party states that it is an ongoing case before the Magistrate court touching on the suit. I have seen the consent order made by parties on 22<sup>nd</sup> January, 2015 directing the **District Surveyor Narok** to visit Plots No. 298 Block Narok which belongs to the Applicant herein and Narok Township which belongs to the plaintiff / Respondent to ascertain their boundaries. Following the above it is evidenced that the Applicant herein has an interest in the instant case before. The ELC case in my mind his inclusion as a party will enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. It is my considered opinion that the Applicant has a stake in the proceeding before the court and his interest can only be articulated if he appears in the case as an interested party.

The upshot of the above is that the Notice of Motion dated 18<sup>th</sup> June, 2020 is merited and I will allow the same and order that the Applicant **ABDI MOHAMED YUSUF** is enjoined as an Interested Party in the suit. I will also award costs to the Applicant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAROK THIS 8TH DAY OF NOVEMBER ,2021**

**MOHAMED N. KULLOW**

**JUDGE**

**Ruling delivered in the presence of: -**

**Mr. Kere for Respondent**

**No appearance for Plaintiff**

**No appearance for Interested Party**

**Tom Court Assistant**