



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO.155 OF 2017

(FORMERLY NAIROBI CIVIL SUIT NO. 113 OF 2008(O.S))

IN THE MATTER OF; THE REGISTERED LAND ACT, CAP 300 LAWS OF KENYA

AND

IN THE MATTER OF; THE LIMITATIONS OF ACTIONS ACT, CAP 22 LAWS OF KENYA

AND

IN THE MATTER OF; THE CIVIL PROCEDURE ACT. CAP 2 LAWS OF KENYA

MARY NJERI KABUNDI.....PLAINTIFF/RESPONDENT

VERSUS

CHRISTINE MITHIRI MBUGUA.....1ST DEFENDANT/RESPONDENT

MARGARET NJERI.....2ND DEFENDANT/RESPONDENT

MBAI BARNARD MBAI.....APPLICANT

RULING

The matter for determination is the Notice of Motion Application date **10th May 2018**, by the Applicant seeking for orders that;

- 1. THAT the Applicant, MBAI BARNARD MWANGI, be joined as an interested party in this suit.***
- 2. THAT the order of inhibition and/or caveat issued by this Honourable Court on 7th December 2009 in respect of L.R No. NDUMBERI/RIABAI/3825, be lifted and/or cancelled.***
- 3. THAT the costs of this Application be provided for.***

The Application is premised on the grounds that on **7th December 2009**, the Court issued orders of inhibition and/ or caveat in respect of six parcels of land being **L.R No. Ndumberi/Riabai/3820-3835** to ensure that they do not change hands before the suit is heard and determined. That the Interested Party is the registered owner of **L.R 3825**, and is therefore a necessary party and despite being the registered owner, he was never made a party to the suit nor served with the application giving rise to the orders of inhibition. Further that the suit is yet to be determined and due to the orders granted, he is unable to make any transactions in respect of the said property and unless the orders sought are granted, he will be greatly prejudiced having been condemned unheard.

In his supporting Affidavit, the Applicant **Mbai Benard Mbau**, averred that when he conducted a search over the suit property, on the **5th December 2017**, he realized that an order had been registered against his parcel of land on the **8th December 2009**. He further averred that his efforts to peruse the court file and ascertain the circumstances under which the said order were issued did not bear fruits as the Court file was unavailable. He contended that he was neither a party to the suit nor served with the said orders issued on **7th December 2009**. He therefore urge the Court to enjoin him as an interested party.

The 2nd Defendant filed grounds of opposition dated 17th December 2009, and averred that the Applicant had not guided the Court as he has not given any documentary evidence to demonstrate his interest in the suit property. Further that the Applicant is seeking to be enjoined in the suit and cannot therefore be heard to be seeking orders as he is not yet a party to the suit.

The Application was canvassed by way of written submissions, which the Court has now carefully read and considered. The Court too has considered the pleadings and the annexures thereto. The issue for determination is whether the **Applicant is entitled to the orders sought**.

The Applicant has sought to be enjoined in the instant suit as an interested party. The Applicant, has averred that he is the registered owner of **L.R 3825**, and that the same had a caution courtesy of the instant suit. To this effect, the Applicant has annexed a titled deed that confirms that he is the registered owner of the suit property and further annexed an official search that evidences that indeed there is a caution that was registered on the 8th of December 2009, barring any dealings in the property in accordance with an order issued in the instant suit.

Though the Plaintiff/ Respondent has contested this Application, and averred that the Applicant has not proved that he has any interest over the suit property, the Plaintiff/ Respondent has also submitted that the instant suit is a consolidation of various other suit that were subdivided as a result of the 1st Defendant's alleged fraudulent acts. This Court therefore finds and holds that the Applicant has proved that he has interest over the suit property.

As to whether he ought to be enjoined in the suit as an interested party, the Court is guided by **Order 1 Rule 10(2)** of the **Civil Procedure Rules** which states:-

“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”.

Further the Court is persuaded by the findings in the case of **Moses Wachira ...Vs... Niels Bruel & 2 Others [2015] eKLR** wherein the Court quoted the Supreme Court decision in **Communications Commission Of Kenya And 4 Others ...Vs... Royal Media Services Limited & 7 Others Petition No. 15 OF [2014]eKLR** where the Court pronounced itself on who an Interested Party is and held as follows:

*“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court's decision in the **Mumo Matemo** case where the court (at paragraphs 14 and 18) held:*

*“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly in the case of **Meme v. Republic**, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:*

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;*
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;*
- (iii) Joinder to prevent a likely course of proliferated litigation.*

We ask ourselves the following questions:

- a) what is the intended party's state and relevance in the proceedings and*
- b) will the intended interested party suffer any prejudice if denied joinder.?”*

It is therefore evident that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court.

Further, it is evident that such joinder or amendment should be freely allowed if such amendment or joinder do not result in prejudice or injustice to the other party. See the case of **Central Kenya Ltd...Vs...Trust Bank & 4 Others C.A No.222 of 1998**, where the Court held that:-

“All amendment should be freely allowed at any stage of the proceedings provided that the amendment or joinder as the case may be will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs”.

In this instant case, the court has already held that the Applicant is a necessary party as he has interest over the property and the fact that all other parties that were purchasers of the subdivisions of the property are parties to the suit, no prejudice would be occasioned if the Applicant is made a party. Further this Court notes that the **caution** over the suit property was registered in 2009, and the Applicant acquired proprietorship over the suit property in the year 2008, and it would therefore means that at the time the caution was being put in place, the Applicant had interest over the property and was therefore a necessary party. Consequently, the Court holds and finds that the Applicant is a necessary party and his Application to be enjoined as an interested party is merited.

The Applicant had also sought for lifting of the orders of inhibition and restriction that had been registered against **L.R 3825**. However, the Applicant has not given any satisfactory reason as to why the said orders should be lifted. This Court is not satisfied that any reason has been advanced as to why the said orders that were acquired regularly are to be lifted and Consequently this Court finds and holds that the said prayer is not merited and thus the same is disallowed entirely.

Having carefully considered the facts of this case, the affidavits filed by both parties, the rival submissions herein and the relevant provisions of law, and authorities cited, this Court finds that the Applicant being a necessary party and having interest over the suit property should be enjoined as an interested party. As to the issues on whether or not the property was fraudulently acquired, the same can only be canvassed with and determined at the main trial after calling of evidence.

The Upshot of the foregoing is that the **Notice of Motion Application** dated **10th May 2018**, is found partially merited and is allowed in terms of prayers **No. 1 only** with costs being in the cause. However prayer **No. 2** is disallowed entirely.

It is so ordered.

Dated, signed and Delivered at Thika this 7th day of May 2020

L. GACHERU

JUDGE

7/5/2020

Jackline - Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic and in light of the directions issued by the Lordship, the Chief Justice on **15th March 2020**, this **Ruling** has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

By Consent of :

No appearance for the Plaintiff/Respondent

Mr. Njagi for the 1st Defendant

No appearance for the 2nd Defendant

No appearance for the Applicant

L. GACHERU

JUDGE

7/5/2020