



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 326 OF 2013**

**WILFRED G GISEBE.....PLAINTIFF**

**VERSUS**

**CHEPKWONY CHUMO.....1<sup>ST</sup> DEFENDANT**

**KALENJIN ENTERPRISES.....2<sup>ND</sup> DEFENDANT**

**GIDIEON KIPYEGON.....3<sup>RD</sup> DEFENDANT**

**AND**

**CHERUIYOT HENRY KIPTANUI.....INTERESTED PARTY**

**RULING**

***(Application to amend plaint; extend validity of summons and for injunction; leave to amend granted; summons extended by a further 6 months; injunction denied as suit land is in name of interested party yet plaintiff not seeking any substantive orders against the title holder).***

1. The application before me is that dated 16 October 2018 filed by the plaintiff. It is an application seeking leave to amend the plaint, to also extend summons against the 3<sup>rd</sup> defendant, and for injunction to restrain the defendants and interested party from dealing with the land parcel Miti Mingi/Mbaruk Block 3/1681 (Mbaruk). To put matters into perspective, this suit was commenced through a plaint which was filed on 21 March 2012. In the plaint, the applicant sued Chepkwony Chumo as 1<sup>st</sup> defendant, and Kalenjini Enterprises (a land buying company) as 2<sup>nd</sup> defendant. He averred that in the year 1990, he was allocated by the company, the Plot No. 1681 in Barut Farm and that he took possession of the plot. He however left in the year 1992 owing to tribal clashes. He averred that during his absence, the 1<sup>st</sup> defendant processed an allotment letter and title deed for the land. In the suit, he asks for orders to restrain the defendants from dealing with the said land and for a further order that he be registered as proprietor. No appearance was entered for either the 1<sup>st</sup> or 2<sup>nd</sup> defendants.

2. On 27 May 2016, the applicant filed an application seeking to amend the plaint to include one Gideon Kipyegon Rop as 3<sup>rd</sup> defendant. He averred in the application that the suit land is now registered in the name of the 3<sup>rd</sup> defendant hence the need to add him as a party. I found that it was not necessary for that application to be filed as leave was not needed, there having been no appearance, but I have not seen any amended plaint filed to enjoin the said Gideon Kipyegon Rop.

3. On 24 November 2016, an application was filed by one Cheruiyot Henry Kiptanui, seeking to be enjoined to the suit as interested party. He claimed in the said application that he is the title holder of the suit land, now registered as Miti Mingi/Mbaruk Block 3/1681. The application was allowed on 10 April 2018.

4. In replying to the application, the interested party has contended that he is the rightful owner of the suit land whereas the plaintiff is referring to a different parcel of land. He avers that he stands to suffer irreparably if an injunction is issued.

5. I have considered the application. In so far as the plaintiff wishes to amend the plaint, I see no issue. I have seen the draft annexed amended plaint and from what I can see, the plaintiff basically wishes to add some pleadings on fraud against the defendants and interested party and a declaration that he is the rightful owner of the suit land. Leave to amend is thus granted and the plaint may be amended within 14 days.

6. On extension of summons against the 3<sup>rd</sup> defendant, again, I see no prejudice which will be caused to anyone. I however note that this is

now an old case, and I only extend the validity of summons by a further 6 months, and if service is not effected within this time, the suit against the 3<sup>rd</sup> defendant will abate.

7. That leaves the prayer for an injunction to restrain any further dealings over the suit land. I do note that the suit land is currently registered in the name of the interested party. For reasons that I still cannot comprehend, the plaintiff does not wish to make the interested party a substantive party to this suit yet the title is currently with the interested party. For one to get an injunction, one needs to demonstrate a prima facie case with a probability of success against the defendant. I however do not see how the plaintiff will succeed if the title holder is not a substantive party in the suit. The interested party only came to the suit because he noted that the plaintiff is litigating over land owned by him without the plaintiff making him a party. He was thus perfectly entitled to apply to be an interested party. But if the plaintiff wants the title, which is in the name of the interested party, he needs to make the interested party a substantive defendant, so that he can seek orders against him. Without that being the position, I do not see how the plaintiff will succeed in his claim for the title. In my view, no prima facie case has been established by the plaintiff and the prayer for an injunction is therefore dismissed.

8. The plaintiff has only succeeded against the defendants who are yet to enter appearance in the matter but has failed in the orders sought against the interested party. The interested party will therefore have the costs of this application.

9. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 9<sup>th</sup> day of July 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of :-**

Ms. Maiyo for the applicant.

No appearance for the defendants.

No Appearance on the part of M/s B. O Akang'o & Co. for the interested party.

Court Assistants- Nelima Janepher/Patrick Kemboi

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**