



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 170 OF 2016

EVAHLYN WAIRIMU KAMAU.....1ST PLAINTIFF

ANTHONY KIROMO KAMAU.....2ND PLAINTIFF

CAROLINE WANJIKU KAMAU.....3RD PLAINTIFF

MARY WANGU KAMAU.....4TH PLAINTIFF

VERSUS

SHADRACK KAMAU KAROMO.....DEFENDANT

AND

PATRICK JESSE NYAGA.....INTERESTED PARTY

RULING

Background

By a Notice of Motion dated 29th June 2020, the Interested party/Applicant sought to be enjoined as an interested party in this suit. The application is supported by three (3) grounds shown on the face of the said application and his affidavit sworn on 6th July 2020. According to the applicant/interested party, there is another case he instituted in Baricho Law Courts being SPMCC No. 73 of 2018 where he sued the defendant who had sold him a portion of the same parcel of land No. KIINE/KIANGAI/1690.

The applicant further contends that the plaintiffs in this suit who are the children of the defendant are also claiming the same land and that it would be in the interest of justice to have him enjoined so that he can have his claim determined without being prejudiced. The application is opposed by the plaintiffs in this case who filed a replying affidavit through Evahlyn Wairimu Kamau. In her evidence, Evahlyn deposed they have instituted this suit against the defendant who is their father for a declaration that the defendant holds land parcel No. KIINE/KIANGAI/1690 for himself and in trust for his entire family. The 1st plaintiff further stated that the applicant herein is not a family member of the defendant and that there is no basis to have him enjoined in this suit. It is further deposed that the applicant's claim against the defendant is for the purchase of a portion of the suit land which is a claim based on a contract and cannot therefore be canvassed in the instant suit. The plaintiffs also contend that even if the applicant actually paid money to the defendant for the purchase of a portion of the said land, such an agreement cannot be enforceable as the applicant was well aware that the land in question is a family land which the defendant was holding as a trustee on behalf of the plaintiffs.

The plaintiff also stated that at the time the applicant purported to have bought a portion of the suit land, there was a caution placed restricting any transaction in the suit land. She annexed a copy of the green card as an Exhibit. The 1st plaintiff also stated that they obtained interlocutory injunction orders on 25th October 2016 and confirmed on 13th December 2016 and registered against the suit property. Despite the orders of the Court, the defendant continued to purportedly transact with the aforesaid land by entering into acknowledgment slips with the applicant. She deposed that in addition to lodging the aforesaid cautions

and restrictions, the plaintiffs have been conducting official searches periodically to ensure that the suit land is not disposed of fraudulently.

The defendant did not file any response to the application but indicated that he was not opposing the application.

When the application came up for directions on 7th December 2020, the parties agreed to canvass the same by affidavit evidence and written submissions.

Legal Analysis and Decision

I have considered the affidavit evidence in the supporting affidavit and the replying affidavit. I have also considered the submissions by the counsel and the applicable law. The law on joinder of parties is governed by **Order 1 Rule 15 of the Civil Procedure Act Cap. 21 Laws of Kenya** which provides thus:-

“1. Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party):-

(a) That he is entitled to contribution or indemnity;

(b) That he is entitled to any relief or remedy relating to or connected with the original subject matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) That any question or issue relating to or connected with the said subject matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant and the third party or between any or either of them, he shall apply to the Court within 14 days after the close of pleadings for leave of the Court to issue Notice (hereinafter called a third party Notice) to that effect, and such leave shall be applied for by summons in Chambers ex-parte supported by affidavit”.

The facts given by the applicant is that he purchased a portion of the parcel of land in dispute being L.R. Number KIINE/KIANGAI/117. The plaintiffs are also claiming the same land on grounds that the land is a clan land and that the defendant is holding the same in trust for himself as well as the plaintiffs. The applicant stated that he sued the defendant in another suit being SPMCC No. 73 of 2018 (Baricho) which is pending hearing and determination. The two competing interests over the same property is a clear demonstration that the applicant is candidate for joinder as a party in this suit.

The Supreme Court articulated itself on this issue in the case of **Francis Kariuki Muruatetu Ltd & Another Vs Republic & 5 Others in Petition No. 15/16 and reported in (2016) e K.L.R** where it identified the following ingredients in granting an application for joinder:

(1) The personal interest or stake that the party has in the matter must be clearly identifiable and must be proximate enough stand apart from anything that is merely peripheral.

(2) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

(3) Lastly, a party must, in its application, set out the care and/or submission it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court”.

The above decision by the Superior Court is prescriptive and binding on me. This application has clearly set out identifiable interest in the person of the

applicant. I am satisfied that the applicant is a suitable person to be enjoined in this suit as defendant. Consequently, I allow the Chamber Summons dated 29th June 2020 in the following terms:-

(1) The applicant be and is hereby enjoined as a 2nd defendant in this suit.

(2) The applicant’s suit in Baricho SPMCC No. 73 of 2018 is hereby transferred to this Honourable Court to be consolidated with the instant case for hearing and determination.

(3) The costs of this application to abide the event.

(4) Mention on 17th June 2021 for directions.

RULING READ, DELIVERED PHYSICALLY AND SIGNED IN OPEN COURT AT KERUGOYA THIS 21ST DAY OF MAY, 2021.

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E.C. CHERONO

ELC JUDGE

In the presence of:

1. Ms Wambui holding brief for Kamwenji for the Applicant
2. Ms Wanjiru Waweru holding brief for C.S. Macharia for Respondent
3. Kabuta – Court clerk.