



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO. 295 OF 2017

JASON NJURU MWANGI - 1ST PLAINTIFF
JANE WANJIKU NJUGUNA - 2ND PLAINTIFF
VS
NYAMBURA MWANGI - 1ST DEFENDANT
KARIUKI MWANGI - 2ND DEFENDANT
JOSEPH NJUGUNA NJURU - APPLICANT/INTENDED

INTERESTED PARTY

RULING

1. The Applicant herein filed a Notice of Motion under section 13 of the Environment and Land Act, section 3A of the Civil Procedure Act and any other enabling provisions of the law seeking the following orders:-

- a. That this Court be pleased to enjoin the Applicant as a party to the suit
- b. Costs of the application.

2. The application is premised on the following grounds: -

- a. The suit land belongs to the Applicant's mother deceased thus creating an interest for the Applicant.
- b. That the parties did not disclose to him the presence of a suit at Kangema law Courts.
- c. That the parties in this suit have swindled his mother of the land.

3. Joseph Njuguna Njuru the Applicant in his supporting affidavit deponed and reiterated the contents of the grounds aforesaid.

4. The application was opposed by the Defendants on the grounds that; the application is misconceived and incompetent; is bad in law, a gross abuse of the process of the Court and untenable; fatally incurably defective; frivolous and vexatious and is without merit.

5. The Plaintiffs opposed the application, Jason Njuru Mwangi deponed that the application is bad in law and incompetent; a gross abuse of the process of the Court and unmeritorious. He disclosed that the Applicant did file similar application in ELC Misc application No 1 of 2017 at Kerugoya which application was dismissed. That the Applicant is not suited to bring the application for want of locus standi as he has not obtained letters of grant of administration for the estate of his mother. In any event the Applicant did not annex any draft pleadings to show the interest in the suit lands; That it is on record that his late mother got Loc 12/subloc1/255 vide SRMCC NO 1 of 1996; that the Applicants current application is resjudicata having been determined in SRMCC NO 1 of 1996; that the issues in the current suit are not distinct from the issues raised in the application and therefore the application is misplaced.

6. Parties elected to file written submissions which I have carefully reviewed and considered.

Determination

7. Having considered the application, the grounds of opposition, submissions where applicable and the affidavit evidence on record, the issue for determination is whether the Applicant has made out a case for joinder as an interested party to the proceedings and who meets the costs of the application.

8. The Applicant is seeking to be enjoined in the suit. The reason given is that he will be able to inform the Court the circumstances of ownership of the suit property by his deceased mother.

9. The application is opposed by both the Plaintiffs and the Defendants.

10. The Applicant has filed his application under section 3A of the Civil Procedure Act, that is under the inherent powers of the Court. It is trite law that the inherent powers of the Court should not be exercised where a statutory provision has been provided. In this case Order 1 rule 10(2) of the Civil Procedure Rules govern joinder of parties to a suit.

11. The provisions of Order I rule 10(2) of the Civil Procedure Rules, 2010 states 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 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”. [emphasis is mine].

12. The rules of joinder of parties to a suit are settled. In the case of **Joseph Njau Vs Robert Maina & 3 others HCCC NO. 136 of 2000**, the learned Judge enumerated the guiding principles as thus; the party must be a necessary party; must be a proper party; in case of a Defendant there must be a relief flowing from that Defendant to the Plaintiff; the ultimate order or decree cannot be enforced without his presence in the matter; his presence is necessary to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit.

13. The Court of Appeal has equally set down the necessary threshold to be met for joinder of parties in the Civil Appeal case of **Francis Kariuki Muruatetu & Anor. Vs Republic & 5 Others (2016) eKLR** where the Court held that the Applicant must demonstrate the personal interest that she has in the matter by laying sufficient grounds before the Court; the prejudice she would suffer if she is not enjoined as interested party; set out the case that she intends to make before the Court and demonstrate the relevance of the evidence being proffered to the Court in determining the issue in controversy.

14. Black’s Law Dictionary 9th Edition at page 1232 defines an interested party as;

“a party who has a recognizable stake (and therefore standing) in a matter”.

15. In determining whether or not a person is indispensable or a necessary party, the Court must carefully examine the facts of the case, the relief sought and the nature and extent of the absent parties interest in the controversy raised in the suit.

16. In the case at hand, the question for determination in this case is whether the Defendants illegally and fraudulently subdivided the suit land Loc 12/sub Loc 1/2622 into 4 portions that is to say, Loc12/sub-Loc 1/2877, 2878, 2875 and 2876 without the consent of the Plaintiffs and contrary to the Court order issued 15.11.2000.

17. In his submissions the Applicant has given 3 reasons for joinder; that the suit land belonged to his mother; and how the 1st Plaintiff had his mother locked up for flimsy reasons and changed the title in the LDT case; that the Plaintiffs have not complied with order 4 rule 1 (f) of the Civil Procedure Rules that require a party to disclose the existence of a case in Court. That there was non disclosure of Kangema case No 1 of 1995; thirdly that the Applicant seeks a right to be heard.

18. The Applicants case as set out in the preceding paragraph does not show how his presence will assist the Court to effectually and completely adjudicate the dispute between the current parties. His interest in the subdivision/partition of the suit land into separate or individual titles has not been demonstrated.

19. Under order 1 rule 10(2) the proper party to make an application for joinder are the parties themselves in the suit or by the Court on its own motion. In this case the Court has not moved on its own motion. It has been moved by the intending party formerly. The operative word in Order 1 rule 10(2) is “either party” to denote that the party moving the Court has to be an existing party and the intending party cannot invite himself and stake the position that he wants in the suit. Both the Plaintiffs and the Defendants have opposed the application as none of the parties in the suit have any relief that they are seeking from the intending party.

20. From the forgoing this Court is satisfied that the Applicant has not met the guiding principles of joinder. The application is unmeritorious and is dismissed with costs to the Plaintiffs and the Defendants.

DELIVERED, DATED AND SIGNED AT MURANG’A THIS 2ND DAY OF JULY 2018

J.G. KEMEI

JUDGE