



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 17 OF 2018

SAM & STEVE PROPERTIES LIMITED.....PLAINTIFF

VERSUS

EUNICE MUTHONI.....DEFENDANT

RULING

The application before court for determination is the Defendant's Notice of Motion application dated the 28th May, 2019 brought pursuant to section 1A, 1B and 3A of the Civil Procedure Rules. The Defendant seeks for the company BEDEROEUMA COMPANY LIMITED to be enjoined in these proceedings as an interested party. The application is premised on the grounds on the face of it and the supporting affidavit of EUNICE MUTHONI who is a Director of the aforementioned company. She contends that the subject properties Kajiado/ Kipeto/ 3462 to 3554 was sold to the Applicant by the Plaintiff. Further, the Applicant and the Plaintiff had an accord contract whereby the Plaintiff sold suit properties to the Applicant way back in 2013, a factor not captured in the pleadings. She insists the Applicant's interests are indeed overlooked, disregarded and/ or ignored despite the right as a bona fide purchaser for value. She avers that the acts of the Plaintiff to seek orders as regards the aforementioned properties and failing to include the Applicant is tantamount to frivolous acts which would lead to grave injustice and untold damage to it.

The Plaintiff opposed the application and filed a replying affidavit sworn by SAMUEL NDIBA KIHARA who is its director where he explains that the Plaintiff was filed against the Defendant who purported to enter, occupy and or sell the suit properties. He claims the intended interested party has not interfered with the suit properties in any manner and therefore its inclusion to these proceedings would not serve any purpose. Further, it is the Defendant who purported to erect an illegal structure on the suit properties and not the intended interested party. He insists no authority given to the Defendant has been filed. He reiterates that the Intended Interested Party is not necessary in this proceedings and the issue for determination is between the Plaintiff as well as the Defendant. He reiterates that the Sale Agreement between the Plaintiff and the Intended Interested Party is not enforceable because the company breached the terms of the agreement when it failed to pay the agreed purchase price. Further, the suit properties are still in the name of the Plaintiff since the purported sale did not materialize.

The application was canvassed by way of written submissions.

Analysis and Determination

Upon consideration of the Notice of Motion dated 28th May, 2019 including the respective affidavits and rivaling submissions, the only issue for determination is whether Bederoeuma Co. Ltd should be enjoined as an Interested Party in this suit.

The Applicant in its submissions reiterated its claim and contended that the Intended Interested Party has a stake in the cause of action herein. To buttress its averments, it relied on the following decisions; **Dalip Singh Karam V Anderji Odhavji Nathwani (1949) LRK 49; Charles Karuri Mbutu V Samuel Muhoro Civil Appeal 127 of 1999 (1999); Kiai Mbaki & Others V Gichuhi Macharia & Another Civil Appeal 178 of 2002 (2002); Hon. John Njoroge Michuki & Another V Kentazuga Hardware Limited Civil Application 16 of 1998; and Ezzi Paints & Hardware V Rahisi Stores & Another Civil Application No. 231 of 1998.**

The Plaintiff/ Respondent in its submissions insists the Defendant did not include a Counterclaim but merely denied the averments in the Plaintiff, hence enjoining of the Interested Party will not serve any useful purpose. Further, the Sale Agreement between the Plaintiff and the Intended Interested Party is not enforceable as suit properties are still registered in Plaintiff's name.

From a cursory look at the various pleadings and documents filed herein, I note the Plaintiff has admitted at paragraph 4 of the Plaintiff's witness statement for SAMUEL NDIBA KIHARA that there was indeed a Sale Agreement between itself and the Intended Interested Party. Further, at paragraph 5 and 6 of the Statement of Defence, the Defendant makes reference to the Agreement between the Plaintiff and the Intended Interested Party in respect to the suit properties. At paragraph 11 of the replying affidavit in respect to the instant application, the Plaintiff admits there was an agreement with the Intended Interested Party in respect to the suit properties which was not enforceable. On issue of joinder of an intended of an intended interested party, Order 1 Rule 10 (2) of the Civil Procedure Rules stipulates as follows:

' (1) 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.'

In the case of **Trusted Society Of Human Rights v Mumo Matemo & 5 others [2014] eKLR** , the Supreme Court held that: **' 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.'**

Further in the case of **Joseph Njau Kingori vs. Robert Maina Chege & 3 others [2002]eKLR** Nambuye J as she then was, provided the guiding principles to be adhered to when an intending interested party is to be joined in a suit and stated that: **' When the above principles are applied to the facts of these applications it is clear that the guiding principles when an intending party is to be joined are as follows:(1) He must be a necessary party; (2) He must be a proper party; (3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff; (4) The ultimate order or decree cannot be enforced without his presence in the matter; (5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.'**

Based on the facts as presented, and in relying on Order 1 Rule 10 (2) of the Civil Procedure Rules while associating myself with authorities I have cited, it is evident the presence of BEDEROUEMA COMPANY LIMITED is necessary to enable the court effectually and completely adjudicate upon this suit. I find that in the interests of justice and it would be proper if BEDEROUEMA COMPANY LIMITED was enjoined in this suit. Further that the ultimate orders and decree made in the suit herein will not be enforced without its presence in the matter. I disagree with the Plaintiff 's averments that the Interested Party is not necessary to be part of the suit. I find that it is pertinent for the said company to be enjoined in the suit to enable the Court arrive at a proper determination of the suit. Further, I find that no prejudice will be suffered by the Plaintiff if the said Company is enjoined in these proceedings.

It is against the foregoing that I find the instant Notice of Motion application merited and will allow it.

Costs will be in the cause

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 22ND DAY OF JUNE, 2021

CHRISTINE OCHIENG

JUDGE