



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 230 OF 2013

TOM OTIENO OMBOYA.....PLAINTIFF

VERSUS

1. ZUM ZUM INVESTMENTS LTD

2. HABITAT & HOUSING IN AFRICA SHELTER AFRIQUE

3. PURITY ACHIENG OUKO.....DEFENDANTS

MICHEAL OKATCH OMONDI.....APPLICANT

RULING

The application is dated 18th May 2021 and under Section 1A, 1B, 3A and 63 (c) and (e) of the Civil Procedure Act, Order 42 Rule 6 (1) Order 1 Rule 10 (2) and Rule 14 of the Civil Procedure Rules seeking the following orders;

1. That this application be certified as urgent and service thereon upon the parties be dispensed with in the first instance.
2. That this Honourable Court be pleased to order for the applicant to be enjoined in this suit either as a defendant and/or interested party.
3. That the applicant be granted leave to file necessary pleadings herein.
4. That this Honourable court be pleased to issue such other orders it deems fit and just to grant.
5. That the costs of this application be provided for.

It is based on the following grounds that the aforesaid matter is scheduled for hearing on 20th May 2021. That the applicant bought the subject property from the 3rd defendant on 12th May 2014. That the defendant attempts to transfer the property to the applicant were stopped by the plaintiff who registered a caution on the title against the transfer. That the applicant has been in possession of the subject property since 12th April 2014 when he bought the property from the 3rd defendant. That all the utility bills are in the name of the applicant. That the applicant desires and it is vital that he be enjoined in this suit to protect his interest and that adverse orders might be issued against him without his input and/or participation. That it is in the interest of justice and in helping the court to arrive at a fair hearing that applicants input should be considered. That if the applicant is not enjoined in the suit and that adverse orders are issued against him without his input, evidence and irreparable loss and/or damages. That no prejudice will be caused to and/or suffered by the parties to this suit which cannot be compensated in costs if the orders sought are granted. That unless the orders herein are granted this application will be rendered nugatory and the defendant stands to suffer prejudiced loss and irreparable damage.

The plaintiff/respondent submitted that the application is bad in law and the same ought to be dismissed. That he has no issue with the applicant hence it is wrong for the applicant to seek to enjoin as a defendant in this suit. That he has no claim as against the applicant hence the application ought to be dismissed. That in any event the alleged purchase by the applicant commenced on the 29th May, 2014 when there was signed a transfer of the land while this suit was commenced on the 17th October, 2013. That the applicant is a stranger to the proceedings. That the applicant is an afterthought since the might have been introduced by the 3rd defendant on the 29th May 2014 when this court had issued a preservative order on 19th May 2014. That it is fair that the application be dismissed.

This court has considered the application and the submissions therein. The applicant seeks to be enjoined and a defendant or an interested

party. As to whether he ought to be enjoined in the suit as a defendant or 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”.

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 clear 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. The applicant submitted that the he bought the subject property from the 3rd defendant on 12th May 2014. That the defendant attempts to transfer the property to the applicant were stopped by the plaintiff who registered a caution on the title against the transfer. I find that the applicant has an interest in this matter and ought to be enjoined. The plaintiff submitted that he has no claim against the applicant but the defendants. **I find that joinder of the applicant as an interested party will result in the complete settlement of all the question involved in the proceedings. I find this application is merited and order that the applicant be enjoined in this matter as an interested party and is granted to file the necessary pleadings within the next 14 days from today’s date. Costs to be in the cause.**

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 26TH OCTOBER 2021.

N.A. MATHEKA

JUDGE