



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 120 OF 2013

JACKSON MUIRURI NGUTHI AND 28 OTHERS.....PLAINTIFFS

=VERSUS=

MOSES NDUNGU MUNGAI AND 3 OTHERS.....DEFENDANTS

JACOB SIMIYU MUIIRAH

INGAPBI JONES BOANERGEYS

CHRISPINO AUKO MCOMONDI.....APPLICANTS

RULING

1. Before me is an application dated 23.7.2019 where the intended Plaintiff/Applicant are seeking leave to be joined in the proceedings as Plaintiffs and that the Plaint be amended accordingly.

2. The grounds in support of the application are that:

ii. There exists a common question of fact and law arising between the existing parties and the intended parties, therefore necessitating joinder of parties.

iii. The suit properties originally known as LR Mavoko Town/Block 2/49, LR Mavoko Town/Block 2/38, Mavoko Town/Block 2/124, and LR Mavoko Town/Block 2/88 was subdivided into several plots which were then sold to the Plaintiffs and the intended Plaintiffs.

iv. The existing Plaintiff and the intended Plaintiffs' claim arise from the same property namely LR MAVOKO TOWN/BLOCK 2/49 which was subdivided into several plots then sold to the existing Plaintiffs as well as intending Plaintiffs.

v. The intending Plaintiffs and the existing Plaintiffs were all sold their plots by 1st Defendant MOSES NDUNGU MUNGAI and OKOA DEVELOPMENT COMPANY and the said Moses Ndungu Mungai issued all of them with certificates of ownership.

vi. The intending Plaintiffs have, like the existing Plaintiffs have adverse Possession rights having been in occupation and possession as provided by the law.

vii. The intending Plaintiffs case and prayers are similar and indeed the same as those of the existing Plaintiffs.

3. The Applicants contend that they bought their suit parcels from 1st Defendant in 1996, and were issued with ownership certificates. Jacob acquired Plot No 431 and 432, Ingapbi acquired Plot No 430 while Chrispine got Plot No 415 and 416 which were part of the property known as LR Mavoko Town/block 2/49 and LR Mavoko Town Block 2/38, Mavoko Town/Block 2/124, and LR Mavoko Town/Block 2/88. The 1st and 2nd Applicants have been occupying their parcels for the last 20 years while 3rd Applicant has been in occupation for a period of 14 years.

4. The Applicants are now claiming entitlement to their respective portions of the land through adverse possession.

5. The Plaintiffs have opposed the application vide the Replying Affidavit of Martin Karanja Waikwa, the 7th Plaintiff. They aver that there

is no provision in law which allows the court to add a person as a Plaintiff without the consent of the existing Plaintiffs and that the said Applicants ought to file their own suit.

Submissions

6. I have only seen the submissions of the Applicants dated 15.9.2021. The Applicants cited the provisions of Order 1 Rule 1 of the **Civil Procedure Rules** to assert their claim that they ought to be enjoined in these proceedings. They have also relied on the case of **Meme v. Republic (2004) 1EA124**, where the court observed that a party could be enjoined in a matter for the reasons that:

a) “joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

b) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

c) joinder to prevent a likely course of proliferated litigation.”

7. The applicants also relied on the case of **Lucy Nungari Ngigi & Others vs. National Bank of Kenya Limited & Another (2015) eKLR**.

8. I have considered all the issues raised herein. The question for determination is whether the intended Applicants should be enjoined in this suit as Plaintiffs.

9. The provisions of **Order 1 Rule 10(2) Civil Procedure Rules** stipulate that:

“ 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 to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.

10. A party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty, See- **Joseph Njau Kingori vs. Robert Maina Chege & 3 others [2002] eKLR**.

11. In the current matter, the Intended Applicants desire that the pleadings be amended accordingly so as to accommodate their claim. The question which begs for an answer is “*who will take ownership of the Plaint? Who will drive forth the pleadings of the claimant*”.

12. The suit of the current Plaintiff was filed way back in the year 2013. Why have the Intended Applicants been missing in action for the last eight (8) or so years. This is a case whereby the pleadings are bound to be messy in the event that the Applicants are allowed to board the ship. The Applicants cannot be allowed to piggy ride on the pleadings of the current Plaintiffs at this stage of the trial.

13. All in all, I find that the Application dated 23.7.2019 is not merited. The same is hereby dismissed with costs to the Plaintiffs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2021 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/S Njeru holding brief for Mr Oganda for the Applicants/

Intended Plaintiff

B. M. Musyoki for the Plaintiffs

Court Assistant: Eddel