



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 258 OF 2014

CHRISTOPHER KARIUKI KIRUNGA.....1ST PLAINTIFF/RESPONDENT

JOHN MAINA KIRINGA.....2ND PLAINTIFF/RESPONDENT

PHILLIP MWANGI KIRANGA.....3RD PLAINTIFF/RESPONDENT

VERSUS

ISAAC MURIUKI WAMAI.....1ST DEFENDANT/RESPONDENT

DANIEL KARIANYENI.....2ND DEFENDANT/RESPONDENT

AND

STEPHEN WAWERU.....INTERESTED PARTY/APPLICANT

JULIUS MUTHEE.....INTERESTED PARTY/APPLICANT

JOHN WANJOHI.....INTERESTED PARTY/APPLICANT

RULING

1. The Applicants herein filed a Notice of Motion dated 3rd August, 2020 on 29th September, 2020 whereby they seek the following orders:

(a) That this Honourable Court does enjoin the interested parties herein as Defendants

(b) Spent.

(c) That the plaintiffs be restrained from interfering with the interested parties occupation of land parcel number Kiine/Ruiru/1291 and 1292 pending hearing and determination of this suit.

(d) The costs of this application be provided for.

2. The said application is supported by the joint affidavit of the interested parties herein and is premised on the following grounds: -

a. Land parcel number Kiine/Ruiru/312 belonged to their late brother Joseph Mwangi Peter who died on the 27th January, 2008.

b. Before he died he subdivided the said land into two portions being Kiine/Ruiru/1291 and 1292.

c. That after his death they started utilizing his land parcels numbers Kiine/Ruiru/1291 and 1292 since he had no family apart from them.

d. The plaintiffs do not live on that land but in the neighbouring land and have no locus standi in this suit.\that none of the parties will be prejudiced if the applicants are enjoined in the suit as defendants.

e. That it is in the interest of justice and fairness that the orders sought be granted.

INTERESTED PARTIES/APPLICANTS' CASE

3. The applicants swore a joint affidavit in support of their application whereby they stated that the parcel of land in dispute belonged to their late brother Joseph Mwangi Peter who died on 27th January, 2008.

4. Upon his death they took possession of land parcel Kiine/Ruiru/312 which he owned and have been in occupation to date and it was only recently that they learnt that there were people claiming to be living in the said land.

5. They also stated that no party would suffer any prejudice if they are enjoined as interested parties in this suit.

PLAINTIFFS'/RESPONDENTS' CASE

6. The plaintiffs opposed the application vide a Replying Affidavit sworn by the 1st Plaintiff on 7th May, 2021.

7. They contended that the Defendants are the proprietors of the suit properties Kiine/Ruiru/1291 and 1292 and that they filed Originating Summons in the year 1999 (Nyeri) against the Defendants which is over 20 years ago and if the applicants were in occupation they would have taken notice of the same.

8. Further that while they occupy the neighbouring land, they have been in open occupation/possession of the suit properties, cultivate and utilize them since the 1960's and have carried out extensive developments which include coffee bushes, macadamia trees, avocado trees, bananas and constructed a semi-permanent house.

9. They also stated that the applicants are strangers and have never lived on the suit lands as alleged. They thus have no claim whatsoever on the suit properties and that their application is an abuse of the court process. They urged this Honourable court to dismiss the same.

DEFENDANTS'/RESPONDENTS' CASE

10. The defendants/respondents opposed the application vide a Replying Affidavit of the 1st Defendant which was sworn on 3rd June, 2021.

11. In the said affidavit, the defendants stated that the application was an abuse of the court process and a ploy to delay the matter further.

12. They further stated that the original land parcel number Kiine/Ruiru/312 belonged to one Maina Mutugi and when he passed on his mother Gachui Mutugi filed succession case vide Kerugoya SRM Succ. Cause number 369 of 1994. Thereafter, the said parcel was transmitted to Gachui Mutugi who later transferred the land to Joseph Mwangi Peter in 1996.

13. The said Joseph Mwangi Peter then subdivided the said land parcel into two portions being Kiine/Ruiru/1291 and Kiine/Ruiru/1292 in the year 1997. He then sold the said parcels to the defendants in the year 1996 and they became the registered proprietors of the said parcels.

14. They stated that the applicants were not in occupation of the said parcels of land and they had not demonstrated that they have sufficient interest in the subject matter of the suit and/or that their presence will help determine the issues in dispute.

15. They further stated that the applicants had not demonstrated that they would suffer any prejudice if the application was denied and the suit being an old one ought to be expedited. They said that the said application be dismissed with costs.

PARTIES' SUBMISSIONS

16. The application was heard on 9th June, 2021.

17. The counsel for the Applicants submitted that the Applicants were laying claim to the suit land by the fact that it belonged to their late brother namely Joseph Mwangi Peter. Before the said Joseph passed away, he had indicated to the Applicants that he had not sold the land to anybody and that he was undertaking subdivision for purposes of giving his brother a share of the same as he had no other family.

18. She submitted that there were a lot of irregularities regarding the suit land and are disputing the subdivision in totality and that according to the register, the suit land measures 2.05 Ha which is over 5 acres and not two acres measuring one acre each after sub-division as alleged.

19. She further submitted that they had been supplied with a sale agreement whose authenticity was not ascertained and as a result they sought to be enjoined to this suit to enable them make a follow up.

20. The counsel for Defendants/Respondents relied on the Replying Affidavit sworn on 3rd June, 2021 and the annexures thereto.

21. The Counsel for the Plaintiffs/Respondents also relied on their replying affidavit which was sworn on 7th May, 2021. In addition, he submitted that the application had been brought with undue delay since the suit was filed in 1999.

22. He further submitted that the interested parties have not been in occupation as the plaintiffs have been the ones in occupation of the suit

property since 1960 and have carried out extensive developments. They further submitted that the Applicants' late brother has never been in occupation of the suit land and were strangers to the plaintiff.

23. They thus submitted that the interested parties have no claim on the suit land. They prayed that the application be dismissed.

24. In response thereto, the applicants' counsel submitted that there was no undue delay on their part. They submitted that they have been in use of the suit property until 2020 when the plaintiff frustrated their efforts and they realized that there was a suit in court.

ANALYSIS

25. The applicants have brought the application under **Order 1 Rule 10 (2) of the Civil Procedure Rule, 2010**, which provides 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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

26. From this provision of the law, it is clear that a party can only be added to a suit as a defendant only if his/her presence before the court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit.

27. I have perused the originating summons dated 1st April, 1999 and I note that the Plaintiffs seek orders of adverse possession against the Defendants herein.

28. A case of adverse possession is made against a defendant who is the registered proprietor of the land in dispute as per **Section 38 (1) of the Limitation of Actions Act** which provides that:-

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

29. At paragraph 3 of their replying affidavit the plaintiffs stated that the suit lands are registered in the names of the Defendants herein. It therefore appears that the plaintiffs herein do not have a claim against the interested parties herein as according to them they are not the registered proprietors of the suit lands.

30. In the case of **Jacinta Wanjiru Mwangwa Vs Samwel Theuri & 3 others [2019] e KLR**, the Honourable Court held that: -

“With regard to Order 1 Rule 10 (2), it will be noted that the court has discretion to order the name of a person to be removed from proceedings or to be added to the proceedings, either as plaintiff or defendant, or the joinder of a person whose presence the court feels is necessary for the determination of all questions in the suit. Now, the court will only enjoin a person as defendant if the court feels that the plaintiff has a claim against such person, and as I have explained above, you cannot be defendant if there is nothing that the plaintiff has against you. Before giving the order to enjoin a person as defendant, the court must thus be satisfied that the plaintiff has a claim against such person, for you would not wish for a situation where a person is enjoined as defendant, but there is really nothing that the plaintiff has against such person. It is the same thing where a person is enjoined as plaintiff. The court must be satisfied that such person has a claim similar to what the existing plaintiff has against the existing defendant.”

31. The Interested Parties have prayed that they be added as defendants in this suit as the suit lands were formerly registered in the name of their deceased brother, one Joseph Mwangi Peter. They alleged that the suit lands were resultant subdivisions of land parcel registration number Kiine/Ruiru/312 which belonged to their said deceased brother and subdivided it so that he could give it to them. Further that they were in occupation of the suit lands.

32. I find that the applicants have not demonstrated what their claim exactly is and how the same would enable this Honourable court effectively determine the questions raised in this suit. In the case of **Kenya Medical Laboratory Technicians and Technologists Board & 6 others Vs Attorney General & 4 others [2017] e KLR**, the Honourable Court held that: -

“It is apparent that 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 in the proceedings directly identifiable by examining the questions involved in the suit.”

33. Further, considering that the applicants seem to be raising a claim on the suit lands on behalf of their deceased brother, they have not demonstrated that they have locus standi as they did not furnish this Honourable Court with a grant of administration of the estate of their deceased brother.

CONCLUSION

34. In the circumstances, it is my finding that the application dated 3rd August, 2020 has no merit and the same is hereby dismissed with costs. It is so ordered.

RULING DATED, DELIVERED PHYSICALLY AND SIGNED IN OPEN COURT AT KERUGOYA THIS 8TH DAY OF OCTOBER, 2021.

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E.C. CHERONO

ELC JUDGE

In the presence of:-

1. Ms Mwangi for the Plaintiff
2. Ms Wanjeri holding brief for Kebuka for the Defendants
3. Mr. Igati Mwai holding brief for Muthoni Njugua for Interested party
4. Kabuta – Court clerk.