



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KILGORIS

ELC CASE NO. 7 OF 2021

(FORMERLY NAROK ELC CASE NO. 1 OF 2020)

PARMET OLE KISEET.....PLAINTIFF/APPLICANT

VERSUS

SYLVIA MOI & CLINT MOI (*Being sued as Administrators as the estate of*

Jonathan Toroitich Moi(Deceased).....**1ST DEFENDANT/RESPONDENT**

BEATRICE MBULI KIPKEMBOI MOI.....**2ND DEFENDANT/ RESPONDENT**

FRANCIS THUITA KIMEMIA.....**3RD DEFENDANT/ RESPONDENT**

NDEGWA KABOGO.....**PROPOSED INTERESTED PARTY**

RULING

A. INTRODUCTION

1. By Notice of Motion dated 30th January,2020 the Applicant sought for the following orders: -

- a) That **NDEGWA KABOGO** being an Interested party herein be enjoined in these proceedings as an Interested Party.
- b) That the costs of this Application be provided for.

2. The application is based on the grounds thereof and the Supporting Affidavit of NDEGWA KABOGO sworn on 30.01.2020. The applicant avers that he was a party to the transaction that is the subject matter of the suit before the court and he played a major role on the same by paying Kshs. 23,750,000/= directly into the account of the deceased, being the purchase price of the suit property.

3. The Applicant contends that he is a necessary party, who has a stake in the proceedings due to the fact that he is the victim of the fraudulent transaction orchestrated by the Defendants/Respondents and thus needs to be enjoined since he has been adversely affected by the actions of the Respondents.

4. It is his position that his interests will not be well articulated unless he appears in the proceedings to champion his interests. Further, it is in the interest of justice that he be enjoined in the proceedings to avert an injustice being occasioned.

5. The application was opposed. The 2nd Defendant/Respondent filed a Replying Affidavit sworn by Clapton Evans Kagimu on 07.07.2020; an advocate in the firm of Marende & Nyaundi Associates, having conduct of the matter on behalf of the 2nd Defendant/ Respondent, in response to the said application. It is the 2nd Respondent's assertion that the Application is an abuse of the court process and does not meet the threshold required for one to be enjoined as an Interested party, thus should be dismissed.

6. It his contention that the Applicant has not demonstrated any justifiable grounds for being admitted as an interested party. He also avers that the claims of fraud ought to be distinctively filed in a suit where the applicant will state his case to its logical conclusion.

7. He further contends that the applicant has no interest to be prejudiced in the matter. He maintained that an interested party must

demonstrate that he has an interest not just in the proceedings but in the would be orders of the court. No substantial evidence to support the allegation that the amounts transferred were in support of any transaction nor laid any basis for which that transfer was made or that the same were intended for the purpose of purchasing the suit land.

8. The 3rd Defendant/ Respondent also opposed the Application; he filed a Replying Affidavit sworn on 02.10.2020. The 3rd Respondent avers that the Application is misconceived and an abuse of the court process. He maintains that he entered into an agreement of sale dated 05/10/2018 for the sale of suit land; L.R. No. TRANSMARA/KIMINTET C/13 and he made all the payments and had the transfer effected to his favor. Further, during the entire transaction, he never heard from the Applicant neither did any issue of his interest arise.

9. He averred that the Applicant had no direct or remote interest in the suit property as he was neither a purchaser nor a beneficiary. Further, the Applicant has not demonstrated an identifiable stake or a legal interest or duty in the proceedings as required by law.

10. No known evidence is available from the existing records at the lands registry to show that the intended interested party either purchased, facilitated or even partly paid for the deceased's acquisition of the said property. No substantial purpose or benefit that will be gained by the Applicant. Applicant has not adduced any material information or evidence to show that he will be directly affected by the proceedings or the findings of this suit.

11. The Applicant has not met the threshold required to satisfy the criteria for joinder as he has not shown the court how he is involved with the suit property to enable him be enjoined in the proceedings and that his participation in the proceedings would add value to the matter.

12. The Plaintiff did not file any response to the Application dated 30/01/2020. However, he informed the court that he would rely on his filed pleadings as his response and submissions in the matter.

13. On 02/07/2020 this court issued directions that the Application dated 30/01/2020 be disposed by way of written submissions.

14. I have read and considered the Application and the annexures thereto, the responses filed by the various parties, the relevant provisions in law and the rival submissions by both the Applicant and the Respondents in this case together with the various authorities cited in support of each claim and I have taken the same into account in arriving at my decision.

B. ANALYSIS AND DETERMINATION

15. I am of the considered opinion that the sole issue for determination arising therefrom is as follows: -

- i. Whether the Applicant should be enjoined as an Interested Party in the proceedings herein.

A. Whether the Applicant should be enjoined as an Interested Party in the proceedings herein.

16. Order 1 Rule 10(2) of the Civil Procedure Rules 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 or settle all questions involved in the suit, be added.”

17. The Applicant herein has sought to be enjoined as an Interested Party to the suit for the reason that he was a part of the sale of land transaction of the suit property; L.R. No. TRANSMARA/KIMINTET C/13 and the same ought to have been divided equally between the Plaintiff and himself. However, it is his claim that through a fraudulent collusion between the deceased and the Plaintiff, he was unable to get his proper share of the suit property as agreed in the sale transaction.

18. The first step will be to define who an Interested Party is in order to consider whether the Applicant herein falls in the same category/ definition. Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

“interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;

19. Black's Law Dictionary defines an Interested Party as ***“a party who has a recognizable stake (and therefore standing) in the matter.”***

20. Further, The Supreme Court of Kenya in **Communications Commission of Kenya and 4 Others ...Vs... Royal Media Services Limited & 7 Others Petition No. 15 OF [2014] eKLR relied on its earlier decision in the MUMO MATEMO case** where the Court in defining who an Interested Party is, and held as follows:

“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.?"

21. Subsequently, having defined who an Interested Party is, it is important to then determine whether the Applicant satisfies the criteria for joinder as an Interested Party in the proceedings.

22. The law on joinder of interested parties to suits has been settled by the Supreme Court of Kenya in the case of **Francis K. Muruatetu and another v. Republic & 5 others (2016) eKLR**, the court set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows: -

"a. The Personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

b. The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

c. Lastly, a party must, in its application, set out the case and/or submission it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court."

23. Further, in **Skov Estate Limited & 5 others v Agricultural Development Corporation & another [2015] eKLR** Justice Munyao Sila in dealing with the issue of an Interested Party seeking to be enjoined in a suit stated as follows;

"In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than "merely being affected" by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case."

24. The Applicant avers that he played a major role in the purchase of the suit property by paying a sum of Kshs. 23,750,000/= out of the Kshs. 25,000,000/= being the total purchase price and has annexed a bank receipt to signify the said amount being paid into his account. Even though I agree with the 2nd Respondent that the said annexure in the Applicant's Supporting Affidavit is not a clear proof that the said amounts were transferred to the deceased's account or that the same were intended for the purpose of purchasing the suit land; I do also note that the Plaintiff who allegedly jointly purchased the suit property with the Applicant has not challenged the said allegations as to the payment of the Kshs. 23,750,000/= as claimed by the Applicant.

25. In fully adopting the reasoning in the above mentioned cases; I do find that the Applicant has demonstrated on a balance of probabilities that he has a clear and identifiable interest and stake in the present suit and have made relevant submissions to the issue in dispute and further explained how he is likely to suffer prejudice should his application be denied; having paid Kshs. 23,750,000 out of the entire Kshs. 25,000,000/= towards the purchase of the suit property. His interest in my opinion goes further than being merely affected by the judgment or order.

26. Further, I do find that his presence before the court is necessary and he will enable the court to effectually and completely answer questions on ownership of the suit property among others issues involved in the suit.

CONCLUSION

27. In the upshot of the foregoing analysis, I accordingly find that the Application dated 30.01.2020 is merited and is therefore allowed as prayed. The Applicant to regularize his position and file all the necessary documents within 14days from the date of this Ruling. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI ON 30TH DAY OF NOVEMBER, 2021.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of:-

Nonappearance for the Defendant/ Respondent

Nonappearance for the Plaintiff/ Respondent

Nonappearance for the Applicant / Proposed Interested party

Tom Maurice -Court Assistant