



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 943 OF 2012

JEREMIAH BUSIENEL.....1ST PLAINTIFF

JOSEPH KIPLAGAT.....2ND PLAINTIFF

VERSUS

KIMOROK FARM LIMITED.....1ST DEFENDANT

PHILIP SEREM.....2ND DEFENDANT

AND

STEPHEN YATOR.....1ST INTENDED INTEREST PARTY/APPLICANT

CHEBOROR ARAP CHEPTOO.....2ND INTENDED INTEREST PARTY/APPLICANT

EZEKIEL KOMEN.....3RD INTENDED INTEREST PARTY/APPLICANT

WILLIAM KIBET.....4TH INTENDED INTEREST PARTY/APPLICANT

JAMES KIYENG.....5TH INTENDED INTEREST PARTY/APPLICANT

RULING

1. This is a ruling in respect of a notice of motion dated 1st July, 2021 in which the proposed Interested Parties/Applications seek to be joined in these proceedings as Interested Parties and or Co-defendants. The Applicants contend that they have an interest in these proceedings and that the orders of this court issued on 7th February, 2020 are being implemented in such a manner which is likely to affect them adversely.

2. The 1st applicant argues that in early 1970's he purchased about 70 or so acres from the 1st Defendant/Respondent. When the County Land Registrar and County Surveyor Uasin-Gishu County started implementing the orders issued on 7th February,2020, they colluded with some officials of the 1st Respondent who want to have more acres than they purchased.

3. The 1st Applicant further argues that the Applicants are likely to have less acres than they purchased and that therefore it is necessary that they be joined in these proceedings so that they can protect their interests. The 2nd to 5th Applicants filed affidavits which support the sentiments of the 1st Applicant.

4. The 1st and 2nd Plaintiffs/Respondents opposed the Applicants' application based on a replying affidavit sworn on 22nd September, 2021. The 1st and 2nd Respondents contend that a major portion of the claim herein was compromised through a consent recorded on 5th February, 2020 and that the Applicants have not demonstrated what their interest is in this matter or that their interest will not or have not been taken care of.

5. The 1st and 2nd Respondents further contend that the Applicants are not precise as to whether they want to be joined in these proceedings as Interested Parties or Defendants. They further state that the 1st Applicant is a Director in the 1st Defendant Company and that he should channel any grievances through the Company.

6. The 1st and 2nd Respondents also argue that the only outstanding issue in this case is whether the 2nd Defendant/Respondent was rightfully

sued and who is to pay costs of the suit. The 1st and 2nd Respondents state that they have no case against the Applicants which will warrant the Applicants to be joined in these proceedings and that the only reason the Applicants want to join these proceedings is to delay the finalization of this case.

7. The 1st Defendant/Respondent opposed the Applicants application based on grounds of opposition filed in court on 7th September, 2021. The 1st Respondent argues that this court is *functus officio* as the case herein has already been determined and that two previous similar applications have been determined and that therefore the present application is an abuse of the process of court.

8. The parties were directed to dispose of the application through written submissions. The Applicants filed their submissions dated 4th October, 2021. The Plaintiff/Respondents filed their submissions dated 12th October, 2021. The 1st Defendant/Respondent filed its submissions dated 29th September, 2021 and supplementary submissions dated 18th October, 2021.

9. I have carefully considered the Applicants' application as well as the opposition to the same by the Plaintiffs/Respondents as well as the 1st Defendant/Respondent. I have also considered the submissions filed by the parties. The only issue for determination is whether the Applicants should be joined in the proceedings either as Defendants or interested parties.

10. In the Applicants' submissions, they have opted to be joined in the proceedings as interested parties. There are a number of decisions from the Superior Courts setting out the criterion for admitting an Applicant as an interested Party in proceedings. I will pick a few of this for consideration of the present application. In the case of *Marigat Group Ranch & 3 others =vs= Wesley Chepkoiyet and 19 others [2014] eKLR Justice Munyao* stated as follows:-

“For purposes of one who wants to be enjoined as an interested party, I think, that such person needs to fit himself into the catch words “whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit....”

11. In the case of *John Harun Mwau =vs= Simone Hayson & 2 others [2021] eKLR*, the court stated as follows:-

"A person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally that is by curtailing his legal rights. In determining whether or not an applicant has a legal interest in the subject matter of an action sufficient to entitle him to be joined as an interested party the true test lies not so much in an analysis of what are the constituents of the applicant's rights, but rather in what would be the result on the subject-matter of the action if those rights could be established. 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".

12. In the case of *Francis Karioko Muruatetu & another =vs= Republic & 5 others [2016] eKLR*, the Supreme Court Summarized the considerations to be taken into account in admitting an Interested Party as follows:-

“.....From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party, one must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

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 submissions 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."

13. In the case of *Kenya Medical Laboratory Technicians and Technologists Board & 6 others =vs= Attorney General & 4 others [2017] eKLR*, Justice Mativo stated as follows:-

‘.....’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"

14. From the above four cases it is clear that an Applicant intending to be joined in proceedings as an interest Party must demonstrate the following:-

(i) That there are pending proceedings

(ii) That he or she has an identifiable interest in the proceedings.

(iii) That his or her presence in the proceedings will effectually and finally assist the court in determining the issues in controversy.

15. In the instant case, the main case was compromised in a consent judgment recorded on 5th February, 2020 in the following terms;-

“By consent of the parties this suit be partially compromised in the following terms;-

a) THAT prayer 1b of the amended plaint which is that parcel of land No.186614 measuring 1936 acres be surveyed and distributed according to the shares held by each shareholder or persons claiming under them.

b) THAT County Land Registrar and County Surveyor Uasin Gishu County together with the Directors of the 1st Defendant do effect subdivision and transfers of land parcel number LR. NO. 186614 to the shareholders or persons claiming under them.

c) THAT the matter be mentioned within 90 days to confirm compliance.

d) THAT the matter do proceed for hearing on whether or not the 2nd Defendant was rightfully sued.

16. **Black’s Law Dictionary 10th Edition** defines proceedings as follows;-

“The regular and orderly progression of a Law suit, including all acts and events between the time of commencement and the entry of judgment”.

17. In the instant case a judgment has already been entered by consent. What is only remaining is determination as to whether the 2nd Defendant was rightly sued. Judgment having been entered, the Joinder of the Applicants have been rendered moot. Even if they were to be joined for purposes of determination of the remainder of the claim, their presence will not assist the court in determining the issues between the Plaintiffs and the 2nd Defendant.

18. Even if judgment had not been entered, the Applicants would still not have been allowed to join proceedings as they have not demonstrated to the satisfaction of the court what interest they have in the suit. The 1st Applicant is a director of the 1st Defendant Company. His interests can be undertaken by the Company and it is no excuse to say that he has been sidelined by his co-directors as to call for joinder in the proceedings.

19. The judgement was clear that the sharing of the suit property was to be in accordance with the shares held by each shareholder. I therefore find no merit in the Applicants’ application which is hereby dismissed with costs to the Plaintiffs and the 1st Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH NOVEMBER, 2021

E.O. OBAGA

JUDGE

In the virtual presence of;

Mr. Kiboi for Plaintiff

Mr. Tarigo for Intended Interested Parties

M/s.Bornes for Kipnyekwei for 2nd Defendant

M/S.Rotich for Mr. Maritim for 1st Defendant

Court Assistant – Mercy

E.O. OBAGA

JUDGE