



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 554 OF 2013**

**(Consolidated with 493 of 2013)**

**JAYEN MOTICHAND DODHIA.....PLAINTIFF**

**VERSUS**

**LAND REGISTRAR NAKURU.....1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION.....2<sup>ND</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**AND**

**ALBERT KIPKOSGEI LESSONET.....PROPOSED THIRD PARTY**

**RULING**

1. The 1<sup>st</sup> and 3<sup>rd</sup> defendants by a Chamber Summons application dated 10<sup>th</sup> February 2021 expressed to be brought under Order 15 Rule 1 of the Civil Procedure Rules prays inter alia for an order: -

*That the Honorable court be pleased to grant leave to the 1<sup>st</sup> and 3<sup>rd</sup> defendant/applicants to institute 3<sup>rd</sup> party proceedings against one Albert Kipkosgei Lessonet.*

2. The application is grounded upon the grounds set out on the body of the application and the affidavit sworn in support by Winnie Jebet Cheruiyot, Senior State Counsel. The grounds are set out as hereunder: -

*1. That the proposed third party interested party was the vendor of the property which is the subject matter of this suit and that he allegedly sold the land parcel No.Nakuru Municipality Block17/16 to the plaintiff herein;*

*2. That it is alleged by the plaintiff /respondent that the 1<sup>st</sup> defendant failed to keep proper record pertaining the suit land amongst other allegations and thus seeking compensation to a tune of Kshs. 170,825.010.00 from the defendants.*

*3. That if at all there was fraud in the transaction then the same was initiated by the third party and or his agents misleading the agents of the 1<sup>st</sup> defendant into effecting fraudulent transactions.*

*4. That the 1<sup>st</sup> and 3<sup>rd</sup> defendant intend to seek indemnity against the third party.*

*5. That if this application is not allowed the 1<sup>st</sup> and 3<sup>rd</sup> defendants/applicants will not have a chance to claim for indemnity against the proposed third party.*

*6. That it is our humble prayer that the prayers sought herein be granted.*

3. The plaintiff Jayen Dodhia swore a replying affidavit dated 8<sup>th</sup> March 2021 in opposition to the application asserting that there would be no basis for issue of a third party notice considering the issues raised in the instant suit. The plaintiff averred that by the 1<sup>st</sup> and 3<sup>rd</sup>

defendants seeking to introduce a third party in the suit, they were engaging in an effort to cover for the fraudulent actions that led to the issue of a fraudulent and fake certificate of lease to one Gideon Moi who already is a party and the plaintiff in ELC No.493 of 2013 consolidated with ELC No.554 of 2013 where Jayen Dodhia is the plaintiff. The plaintiff further avers the 1<sup>st</sup> and 3<sup>rd</sup> defendants want to cloud the issues in the suit by shifting blame to a third party, Albert Kipkosgei Lessonet when the responsibility of allocating and processing title fell squarely under their dockets. The plaintiff in ELC 493 of 2013, Gideon Moi, did not oppose the application.

4. The proposed third party, Albert Kipkosgei Lessonet filed a replying affidavit sworn on 9<sup>th</sup> September 2021 in opposition to the application. The proposed Third Party contended that the transaction between himself and the plaintiff was above board and that he was not aware of any fraudulent dealing in regard to the suit property. He averred that the 1<sup>st</sup> and 3<sup>rd</sup> defendants had not substantiated the alleged fraud and they had no basis to drag him into the suit. He averred that if there was any fraud, the same was occasioned in the 1<sup>st</sup> and 3<sup>rd</sup> defendants offices and did not involve him as he never worked at the said offices.

5. The 1<sup>st</sup> and 3<sup>rd</sup> defendants and the plaintiff filed written submissions in support and in opposition to the application. The 1<sup>st</sup> and 3<sup>rd</sup> defendants argued that there was fraud in the 1<sup>st</sup> defendant's registry in that a duplicate record of the suit property was fraudulently opened leading to issuance of two separate titles on the same property. The 1<sup>st</sup> and 3<sup>rd</sup> defendants contended that the proposed third party was the one who benefited from the alleged fraudulent transaction and he was therefore a necessary party to the suit. The applicants placed reliance on the case of **Interactive Advertising Ltd & Another -vs- Equity Bank Ltd & 2 Others (2016) eKLR** where Ogola J in allowing an application for Third Party Notice that as in the present case, was opposed by the plaintiff, held that the rationale of Third Party Notice and proceedings is to avoid a multiplicity of suits and the costs arising from the suits. The Judge cited with approval the case of **Transami (U) Ltd -vs- Tranocean (U) Ltd – Kampala High Court Civil suit No. 145 of 1987 (1994) I KAR 175** where the court held:-

*“On the facts and evidence in order to avoid a multiplicity of legal proceedings arising out of the alleged sale of the first plaintiff to the defendant by the government, it is necessary that the Attorney General be joined as a third party so that the court can settle as far as possible all matters in controversy between the parties to the suit.”*

6. The applicants submitted that were the court to find there was fraud and that the same was perpetrated by the Third party it would be in the interest of justice that the proposed Third party be joined to the suit so that he could respond to the allegation of fraud and explain how he acquired the suit property before he sold the same to the plaintiff.

7. The plaintiff in his submissions submitted that his claim is against the 1<sup>st</sup> and 2<sup>nd</sup> defendant for indemnity for the loss incurred after he relied on the records held by them and representations by them and argued that joining the Third Party would in effect convolute the issues for determination in the suit. The plaintiff argued the joinder of the Third Party would prejudice him as the Third Party's whereabouts was unknown to the plaintiff and in the event of a decree in the plaintiff's favour execution could prove difficult. The plaintiff contended that the proposed Third Party was not a necessary party in these proceedings and relied on the case of **Pizza Harvest Limited -vs- Felix Midigo (2013) eKLR** where Havelock, J relied on the case of **Amon -vs- Raphael Tuck & Sours (1956) I All ER 273** where Devlin, J inter alia stated:-

*“--- The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore must be a question in the action which cannot be effectually and completely settled unless he is party.”*

8. In this suit, it is apparent that there was at some point two title registers for land parcel **Nakuru Municipality BlocK17/61** and at varying times one Albert Kipkosgei Lessonet and Gideon Moi were registered as owners of the same parcel of land on 16<sup>th</sup> November 1990 and 12<sup>th</sup> January 2000 respectively as per the copies of the certificates of lease exhibited. It is pertinent therefore for the court to ascertain how the two titles came to be issued on the same property. Gideon Moi in ELC 493 of 2013 claims ownership of the suit property and inter alia seeks mesne profits and eviction of the defendant, Jayen Dodhia. In the statement of defence and counterclaim, Jayen Dodhia claims to be the registered owner of the suit property having purchased the same from the previous owner, Albert Kipkosgei Lessonet on 1<sup>st</sup> August, 2009. He seeks a declaration that he is the owner of the suit property and a permanent injunction.

9. In ELC 554 of 2013 Jayen Dodhia has sued the Land Registrar, National Land Commission and The Attorney General claiming that they acted negligently and /or were in breach of their statutory duties in not ensuring the integrity of their records leading to the maintenance of faulty records, issue of double titles for the same plot and allowing fraudsters to infiltrate the land records in the lands office. The plaintiff claims against the defendants special damages incurred in the sum of Kshs.170,825,010/= and general damages. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed defences where they denied the allegations of negligence and/or breach of duty. The 1<sup>st</sup> and 3<sup>rd</sup> defendants contend that the plaintiff may have obtained title documents to the parcel of land through the fraudulent acts of the proposed Third Party and it is on that account they seek leave to have the proposed third Party joined to the proceedings to enable all issues to be addressed and if necessary, for the 1<sup>st</sup> and 3<sup>rd</sup> defendants to obtain indemnity from the Third Party in case they are held to be liable.

10. The 1<sup>st</sup> and 3<sup>rd</sup> defendants have belatedly sought leave to institute Third Party proceedings against Albert Kipkosgei Lessonet. There has been a long delay from 2013 when the suit was filed.

11. Under Order 15 Rule (1) of the Civil Procedure Rules, leave is required to be sought within 14 days after the close of pleadings. Although an application for leave to issue a Third Party Notice should be ex parte, the plaintiff and the proposed Third Party appear to have been served and they duly filed their responses. Though the application has been filed after a considerable length of time, pertinent issues are raised going to the roots of the title held by the proposed Third Party before he sold the same to the plaintiff and the title held by Gideon Moi. If the title sold by the proposed Third Party was fraudulently obtained by him, and he was party to the fraud, then the 1<sup>st</sup> and 3<sup>rd</sup> defendant in the event of being found liable may be entitled to seek indemnity from the said Third Party.

12. In the premises, it is my view that justice demands that the proposed Third Party be joined to these proceedings to enable the court to adjudicate on all the issues conclusively. He is a necessary party whose participation is necessary for the court to effectually determine all the issues in the two consolidated suits without the necessity of filing an independent separate suit.

13. I allow the 1<sup>st</sup> and 3<sup>rd</sup> defendants application dated 10<sup>th</sup> February 2021. The applicants are directed to file and serve the Third Party Notice within the next 21 days from the date hereof. Matter will be mentioned for directions on 9<sup>th</sup> February 2022 for appropriate directions.

14. Parties will bear their own costs of application.

**RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 16TH DAY OF DECEMBER 2021.**

**J M MUTUNGI**

**JUDGE**