



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

LAND AND ENVIRONMENT LAW COURT

ELC CASE NO. 830 OF 2015

NJUWANGU HOLDING LIMITED.....PLAINTIFF

VERSUS

TANA MINING COMPANY LIMITED.....1ST DEFENDANT

NATIONAL LANDS COMMISSION.....2ND DEFENDANT

CHIEF LANDS REGISTRAR.....3RD DEFENDANT

DIRECTOR OF SURVEY.....4TH DEFENDANT

ATTORNEY GENERAL.....5TH DEFENDANT

RULING

1. In the Notice of Motion dated 9th September, 2021, the 1st Defendant has sought for the following prayers:

a) This Honourable Court be pleased to issue orders that Gatero Enterprises Limited be enjoined as an Interested Party in this suit and be at liberty to file its response to the Plaint.

b) The costs of this Application be in the cause.

2. The Application is supported by the Affidavit of the 1st Defendant's/ Applicant's Director who has deponed that this matter is partly heard; that on 16th September, 2008, the Plaintiff purchased L. R. No. 209/13415 from an entity known as Gatero Enterprises Limited, the Applicant, and that it is important that the Intended Interested Party, as the initial allottee of the land, be allowed in this suit to clear the air on the history of the acquisition of the suit property.

3. In response to the Application, the Plaintiff's Director deponed that the application is an abuse of the court process; that in its documents, the Plaintiff has stated that it acquired the suit property from Gatero Enterprises Limited and that the Plaintiff lawfully acquired the said property.

4. The Plaintiff's Director deponed that there have been numerous pre-trial sessions whereby parties prepared for trial and that this suit was consolidated with two other suits namely Nairobi ELC No. 139 of 2013 and Nairobi ELC 1134 of 2014.

5. It is the Plaintiff's case that on 20th September, 2021, all the parties confirmed that they were ready to prosecute their claims; that the consolidated suits were fixed for hearing on 15th and 16th February, 2022; that the joinder of a party at this stage will only help to further delay the hearing of the consolidated suits and that the Applicant has not explained why it had to wait for six (6) years to file the present Application.

6. The Plaintiff's director finally deponed that the outcome of the suit will not affect the proposed Interested Party and that enjoining the Interested Party in these proceedings would muddle up issues instead of aiding the court to effectively adjudicate the same.

7. The only issue for determination in this matter is whether Gatero Enterprises Limited should be enjoined in this suit. **Order 1 Rule 10**

(2) of the **Civil Procedure Rules** provides as follows;

“2)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.”

8. In the case of Attorney General vs Kenya Bureau of Standards and Another (2018)eKLR, the Court of Appeal held as follows;

“In our view, the circumstances must justify the joinder, in that the claim and defence before the court must raise a doubt as to which of the parties is liable in the final outcome of the dispute ... Another important consideration is whether the joinder is intended to vet the parties or convolute the proceedings with unnecessary new matters and grounds not contemplated by the parties or envisaged in the pleadings.”

9. The Plaintiffs claim is that it purchased L. R. No. 209/13415 (the suit property) from Gatero Enterprises Limited, the Intended Interested Party, and was registered as proprietor of the land.

10. According to the Plaintiff, the 2nd and 3rd Defendants purportedly issued a grant to the 1st Defendant/Applicant on 29th November, 2013, when there were court orders subsisting in ELC 139 of 2013 and that the 2nd Defendant has failed to resolve the parallel process that led to the issuance of parallel grants of title for L. R. No. 209/14619 to the 1st Defendant.

11. In its prayers, the Plaintiff has sought for a declaration that it is the lawful proprietor of L. R. No. 209/13415 and an order annulling the grant issued in respect of L. R. No. 209/14619 in favour of the 1st Defendant.

12. The only reason why the 1st Defendant is seeking for the joinder of the Intended Interested Party in these proceedings is because the Plaintiff has pleaded that it purchased the suit property from the said Intended Interested Party.

13. In my view, the issue of whether the Intended Interested Party had a legitimate title as at the time it sold the land to the Plaintiff is an issue that should be proved by the Plaintiff at trial. The mere fact that it is the Intended Interested Party who sold the suit property cannot by itself inform the joinder of the Intended Interested Party in this suit.

14. Indeed, the burden of proving that the suit property was lawfully transferred from the said Gatero Enterprises Limited lies with the Plaintiff. It is not the function of this court to enjoin a party in a suit for the sole purpose of assisting a party to prove or disprove a case.

15. That being the case, it is the finding of this court that the joinder of the Intended Interested Party is not necessary. This court can effectually and completely adjudicate upon and settle all questions involved in this suit without adding the Intended Interested Party as a party in this matter.

16. For these reasons, the Application dated 9th September, 2021 is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 9TH DAY OF DECEMBER, 2021.

O. A. Angote

Judge

In the presence of;

Mr. Wambeni for Kithara for Plaintiff/Respondent

Mr. Odungo for Olaha for 1st Defendant/Applicant

Mr. Allan Kamau for 3rd – 5th Defendant/Respondent

Court Assistant- John Okumu