



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E089 OF 2021

CHRISTOPHER MBOTE CHEGEPLAINTIFF

=VERSUS=

E3 ENERGY KENYA LIMITED..... DEFENDANT

ANN NJERI MBOTE INTENDED INTERESTED PARTY

RULING

1. The plaintiff, **Christopher Mbote Chege**, initiated this suit through a plaint dated 23/8/2021. His case was that he was the registered proprietor of **Land Reference Number 13537/137** comprised in **Title Number IR 44144**, measuring approximately 0.2132 of a hectare, situated within Juja, Kiambu County. He bought the suit property in 2000. Without his knowledge, permission or authority, the defendant, E3 Energy Kenya Limited, had encroached and trespassed on the said land and had commenced construction works, renovation, furnishing, branding and rebranding thereon.

2. Aggrieved, he sought the following reliefs against the defendant:

a) That a permanent injunction do issue restraining the defendants whether by themselves, their directors, shareholders, agents and/or servants from leasing, transferring alienating, developing, constructing, furnishing, renovating, branding or rebranding or in any way dealing with the plaintiff's property Title No 44144 LR No 13537/137 measuring 0.2132 ha situate within Juja, Thika Municipality, in Kiambu County, in any manner infringing on the plaintiff's proprietary rights and interests.

b) The honourable court be pleased to find that the defendant's possession, occupation and continued occupation and activities being undertaken on the said land Title No 44144 LR No 13537/137 measuring 0.2132 ha situate within Juja, Thika Municipality in Kiambu County is illegal, unlawful and amounts to trespass ab initio.

c) The honourable court be pleased to find that any contract or agreement real or imagined, purported to permit or grant the defendant, any rights, interest or possession of the property Title No 44144 LR No 13537/137 measuring 0.2132 ha situate within Juja, Thika Municipality in Kiambu County is null and void ab initio.

d) That an order do issue directing the defendant to vacate the plaintiff's land Title Number 44144 LR 13537/137 measuring 0.2132 ha situate within Juja, Thika Municipality in Kiambu County with immediate effect, in default, the defendant to be forcefully evicted therefrom.

e) General damages for loss of user and mesne profits

f) Costs of this suit

g) Interest on (d) above

h) Any other relief that this honourable court may deem fit to grant.

3. Together with the plaint, he brought a notice of motion dated 23/8/2021 seeking interlocutory injunctive reliefs, pending the hearing and determination of the suit.

4. The defendant opposed the application through a replying affidavit sworn on 22/9/2021 by Deepak Gadhavi in which he deponed that he was a director of the defendant company. He added that the defendant company was a limited liability company carrying on the business of supplying and marketing of petroleum products. He added that the defendant had no interest in ownership of the suit property and was not in occupation or possession of the suit property. He further deponed that the defendant entered into a dealership agreement with the

plaintiff's wife and son, Ann Njeri Mbote and Kepha Mbote. The dealership agreement allowed the defendant to inter alia, advertise and promote sales, advise on the use of image of the business logo, brand the petrol station, and provide coaching in the operation of the business. In pursuance of the said dealership agreement, the defendant had spent Kshs 4.3 million in branding, marketing expenses, legal fees, station sourcing consultancy, among others. Mr. Gadhavi further deponed that upon the defendant being served with the court papers, he contacted the plaintiff's son, Kepha Mbote, who informed him that there was an existing matrimonial property dispute, to wit, **Nairobi HCCC No 64 of 2013 (OS)** and the suit property was one of the properties that were the subject of the said matrimonial property dispute that was pending. He added that in the circumstances, the wife and son of the plaintiff were necessary parties to this suit.

5. While the said application by the plaintiff was pending disposal, the plaintiff's wife, Ann Njeri Mbote, brought a notice of motion dated 22/9/2021, through which she sought an order joining her as an interested party in this suit. The said application for joinder is the subject of this ruling.

6. The application for joinder was supported by the applicant's affidavit sworn on 22/9/2021 and her supplementary affidavit sworn on 6/10/2021. The application was canvassed orally in the virtual court on 7/10/2021 by her counsel, Mr. Mungai. Her case is that she is the plaintiff's wife and she is in actual possession of the suit property. She runs business on the suit property with the help of her children and the said business is their only source of income. The suit property is a matrimonial property and is currently the subject of an ongoing matrimonial property cause, to wit, **Nairobi HCCC No. 64/2013 (OS)**. Any further proceedings in the present suit in her absence will be prejudicial to her interest in the suit property which is a matrimonial property in her possession.

7. The defendant did not file a response to the application. During the hearing of the application, Ms Jin, counsel for the defendant supported the application and urged the court to rely on the preceding affidavit sworn by Mr. Gadhavi which the defendant had filed as a response to the plaintiff's application for an interlocutory injunction.

8. The plaintiff opposed the application through a replying affidavit sworn on 5/10/2021. He deposed that he is married to two wives: (i) Margaret Waithera Mbote [1st wife]; and (ii) Ann Njeri Mbote [2nd wife]. He has a total of 12 children. He is the registered proprietor of the suit property. The applicant [Anne Njeri Mbote] filed Nairobi **HCCC No 64 of 2013 (OS)** seeking a declaration that she has interest in various properties, the suit property being one of them. The High Court has not made any status quo order relating to the suit property. It is his case that the applicant has not demonstrated any peculiar interest in the suit property to warrant her joinder.

9. I have considered the application; the response to the application; the parties' respective submissions; the relevant legal framework; and the prevailing jurisprudence on the key issue falling for determination in the application. The single issue falling for determination in this application is whether the applicant has satisfied the criteria upon which our courts exercise jurisdiction to grant an order of joinder.

10. Jurisdiction to grant an order of joinder is exercised within the framework in **Order 1 rule 10(2)** which provides as follows:

"10(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."

11. A key consideration when disposing an application for an order of joinder is whether the party seeking to be joined in the suit is a necessary party for the court's effectual and complete adjudication and settling of all questions involved in the suit. Secondly, the court exercises this jurisdiction either on an application or *suo motto*.

12. The applicant's case is that the suit property is matrimonial property and that she is in actual possession of the suit property. Further, she contends that together with her son, Kepha Gitau Mbote, they run a petrol station on the suit property under a company known as Kyma Energies Limited.

13. What emerges from the totality of the evidence placed before the court is that the applicant lays a claim of matrimonial interest in the suit property. Secondly, the applicant claims to have possession of the suit property. Thirdly, the applicant claims that in 2017, her son Kepha Mbote registered a company by the name **Kyma Energies Limited** through which they entered into a dealership agreement with the defendant, relating to a petrol station which the plaintiff and her son run on the suit property. Further, one of the prayers sought in the plaint is an order that any contract or agreement purporting to grant the defendant any rights over the suit property be declared null and void *ab initio*.

14. In my view, the pleadings; the above contentions; and the supporting evidence presented to the court justify grant of an order of joinder of the applicant as well as **Kyma Energies Limited**. The two are, in my view, necessary parties in adjudicating and settling all the questions involved in this suit. To enable them plead to the suit, I will make them substantive parties as opposed to making them interested parties.

15. In the end, I make the following disposal orders:

a) Ann Njeri Mbote and Kyma Energies Limited are hereby joined to this suit as 2nd and 3rd defendants respectively.

b) The plaintiff shall amend and serve the amended plaint within ten (10) days.

c) The added defendants shall file and serve their defences within 15 days from the date of service.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON

THIS 3RD DAY OF DECEMBER 2021

B M EBOSO

JUDGE

In the presence of: -

Mr Ayieko for the Plaintiff

Ms Jin for the Defendant

Mr Mungai for the Intended Interested Party

Court Assistant: Lucy Muthoni