



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 226 OF 2016

WILFRED NG'ANG'A NGARUIYA.....PLAINTIFF

VERSUS

REGISTERED TRUSTEES OF FAITH MISSION CHURCH.....1ST DEFENDANT

VICTOR WAHOME KARIUKI.....2ND DEFENDANT

IBRAHIM SAKWA MZEE.....3RD DEFENDANT

JOSPHAT MUSYOKA NDAMBUKI.....4TH DEFENDANT

HARUN NGUGI NDUNGU.....5TH DEFENDANT

ISAAC MASILA MUTUA.....6TH DEFENDANT

FABIAN CHIMAKATI.....7TH DEFENDANT

MOSICA PROPERTIES LIMITED.....8TH DEFENDANT

MWANGANGI MUTULA MUTUA.....9TH DEFENDANT

JOSEPH WAWERU CHEGE.....10TH DEFENDANT

JOSEPH MUTINDA MUTUKU.....11TH DEFENDANT

AND

MATHEW MULI MUTISO.....1ST PROPOSED INTERESTED PARTY

MEDLENE WANJIRU KINYANJUL.....2ND PROPOSED INTERESTED PARTY

BEATRICE ANYANGO MACHIO.....3RD PROPOSED INTERESTED PARTY

JOEL MULI.....4TH PROPOSED INTERESTED PARTY

STANLUS NDETI MWANIA.....5TH PROPOSED INTERESTED PARTY

GIDEON OMARE.....6TH PROPOSED INTERESTED PARTY

FRANCIS MUOKI.....7TH PROPOSED INTERESTED PARTY

AMBROSE WAMBUA MUTUA.....8TH PROPOSED INTERESTED PARTY

RULING

1. In the Notice of Motion dated 13th January, 2020. The Proposed Interested Parties (*the Applicants*) have prayed for the following orders:
 - a. ***That this Honourable Court be pleased to enjoin one Mathew Muli Mutiso, Medlene Wanjiru Kinyanjui, Beatrice Anyango Machio, Joel Muli, Stanlus Ndeti Mwanja, Gideon Omare, Francis Muoki and Ambrose Wambua Mutua as the Necessary Parties/Interested Parties in this matter.***
 - b. ***That the costs of this Application be provided for.***
2. The Application is supported by the Affidavit of the 1st Proposed Interested Party who has deponed that the Applicants were not named as parties at the time of filing the suit despite being innocent purchasers for value and owners of part of Land Reference number 12715/155 (*the suit property*).
3. According to the 1st Applicant, at the time the Applicants purchased the suit property, they were shown the original title to the disputed parcel of land, including the Transfer Agreement between Syokimau Farm Limited and the 9th Defendant wherein the 9th Defendant had sold the suit property to the 8th Defendant at a consideration.
4. According to the 1st Applicant, the Applicants were shown the Power of Attorney in which the 8th Defendant had authorized the 10th Defendant to sell the suit property to deserving parties; that the Applicants purchased portions of the suit property and that after paying for the land, the Applicants were issued with payment receipts, Certificates of Completion and Letters of Allotment.
5. The 1st Applicant finally deponed that having purchased portions of the suit property, they are necessary parties to the suit; that the ultimate decision of this court in respect to the suit property will not be enforced without their joinder and that their presence in this suit is necessary to enable the court to effectively and completely adjudicate and settle all questions involved in the suit.
6. In reply, the Plaintiff deponed that the Applicants are strangers to him; that if the Applicants have any claim, then the claim should be against the 8th and 9th Defendants having purchased the suit property from them and that the Application is meant to delay the conclusion of this matter.
7. The Plaintiff deponed that the suit has been ongoing for the last four years; that the proceedings do not in any way involve the Applicants and that allowing the Application will mean that the matter commences *de novo*, thus wasting judicial time.
8. In her submissions, the Applicants' advocate submitted that the Applicants were never informed of the pendency of the suit; that the Applicants have an interest in the suit property having purchased the same and that on the face of the Letters of Allotment, it is clear that the plots that were purchased by the Applicants were sub-divisions of L.R. No. 12715/155.
9. Counsel submitted that this being a land matter justice of the case tilts towards allowing the proposed Defendants an opportunity to show the nexus with the disputed land. Counsel relied on the case of ***Amon Vs. Raphael Tuck & Sons Limited (1956) 1 ALL ER 273*** cited in ***Pizza Harvest Limited vs. Felix Midigo (2013) eKLR***, which I have considered.
10. The Plaintiff's counsel submitted that the question of adding or substituting parties is a discretionary one; that the Application for joinder has been made almost four (4) years after filing the suit and that the Application is a waste of judicial time.
11. Counsel submitted that the suit does not in any way involve the Applicants; that the Application has been masterminded by the 1st, 3rd, 5th, 6th, 7th, and 11th Defendants with a view of delaying the finalization of the suit and that the Application amounts to a miscarriage of justice.
12. By way of an Amended Plaint dated 27th April, 2017, the Plaintiff averred that he is the registered proprietor of land known as L.R. 12715/155 measuring 2.023 Ha (*the suit property*), having acquired the same from Syokimau Farm Limited on 8th June, 1993.
13. The Plaintiff averred in the Plaint that he has neither sold the land to Mosica Properties Limited (*the 8th Defendant*) or allowed any person to sub-divide the said land and that the suit land has never been owned by the Defendants.
14. The Plaintiff's case is that the Defendants illegally, un procedurally and fraudulently purported to sell, sub-divide and transfer the suit property by uttering forged document and by interfering with the Deed file in respect of L.R. No. 12715/155.
15. The ultimate prayers that the Plaintiff is seeking are a declaration that the sale transaction of L.R. No. 12715/155 between the 8th, 9th and 10th Defendants and any subsequent sale transaction between the 8th Defendant and any other parties was fraudulent, illegal and of no legal effect.
16. Order 1 Rule 10(2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon an application by either party or *suo moto*, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.
17. In ***Sarkar's Code of Civil Procedure (11th Edition Reprint, 2011. Vol. 1, page 887)***, the authors stated as follows:

“The Section (on joinder) should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”

18. The Court of Appeal of Tanzania, in **Tanga Gas Distributors Ltd vs. Said & Others (2014) E.A 448**, while considering the equivalent of our Order 1 Rule 10(2) of the Civil Procedure Rules stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after Judgment where damages are yet to be assessed; that it is only when a suit or proceedings has been fully disposed off and there is nothing more to be done that the rule becomes inapplicable and that a party can be added even at the appellate stage. This position was adopted by the Court of Appeal in **J M K vs. M W M (2015) eKLR**.

19. For a party to be so enjoined, his presence must be necessary in determining the matter. Hence, the Applicants have to show that they have a stake in the proceedings and that their presence will help the court determine the issues at hand. The mere mention of the term “Interested Party” does not entitle them to be enjoined as parties to the proceedings.

20. The Applicants have sought to be enjoined in this suit on the ground that they purchased the sub-divisions of the suit property from the 8th Defendant; that as at the time they purchased the suit land, they were shown the signed Agreement between the 8th Defendant and the registered owner, the 9th Defendant and that were also shown the Power of Attorney in which the 8th Defendant had authorized the 10th Defendant to sell the suit property to third parties.

21. The Applicants have exhibited the receipts that were issued to them by the 8th Defendant in respect of the portions of land that they purportedly purchased from the 8th Defendant. The Applicants have also annexed Letters of Allotment that were issued to them by the said 8th Defendant.

22. The Applicants, despite purchasing the sub-plots of L.R. No. 12715/155 in the year 2008 were not registered as the proprietors of the purchased parcels of land. Other than not been the registered proprietors of the purchased portions of land, the Applicants have not exhibited the duly signed Agreements between themselves and the 8th Defendant.

23. The failure by the Applicants to annex the Sale Agreements in respect of the portions of land that they purportedly bought in the year 2008 or thereabouts is contrary to the provisions of Section 3(3) of the Law of Contract Act which provides as follows:

“(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—

(a) the contract upon which the suit is founded—

(i) is in writing;

(ii) is signed by all the parties thereto; and

(b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party;

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the Auctioneers Act (Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”

24. Having not annexed executed and attested Sale Agreements, the Applicants’ claim in respect of L.R. No. 12715/155 is a non-starter. In any event, the Plaintiff has alleged in the Plaint that the 8th, 9th and 10th Defendants do not have a good title for L.R. No. 12715/155.

25. The Plaintiff having pleaded in the Plaint that the 8th, 9th and 10th Defendants had no good title to pass to any person, and the Applicants being not the registered proprietors of the suit property to date, it is my findings that the Applicants’ interests vis-à-vis the Plaintiff’s claim can only be ventilated by the 8th, 9th and 10th Defendants who are already parties to this suit. Indeed, if the Defendants’ claim succeeds then the Interested Parties will still have their portions of land.

26. That being the case, it is my finding that the Applicants are not necessary parties to this suit for a complete adjudication of the suit. In other words, the Applicants presence will not be of any assistance to the court to determine the issue of ownership of L.R. No. 12715/155.

27. For those reasons, the Application dated 13th January, 2020 is dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29TH DAY OF JANUARY, 2021.

O.A. ANGOTE

JUDGE