



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC 677 OF 2013

SARAH WANGARI MAINA & FREDRICK NDETO MATHEKA

(Suing as Trustees of Old Race Course Residents Group.....PLAINTIFFS

=VERSUS=

JOSEPH KUSORO OGOLA & OTHERS.....DEFENDANTS

JAMA MUSA HUSSEIN.....PROPOSED INTERESTED PARTY

RULING

Background

1. The suit herein relates to LR No.209/8943 which is at Racecourse in Nairobi (suit property). The suit property had been earmarked for public purposes as an open playing field and resting place for residents of Old Racecourse estate. The suit property was a subject of attempted grabbing by a private developer. When the private developer relinquished it, the Muslim community under Kariokor Sunni Muslim Trust pursued the suit property and managed to be given a letter of allotment.
2. The letter of allotment to Kariokor Sunni Muslim Trust was however cancelled following complaints from the Trustees of old Racecourse Residents Camp who were granted an allotment after the suit property was reverted back to its original use as a children's playground and recreation place. The suit property was however invaded by people who are operating garages. This is how this suit was filed.

Applicants Application.

3. The applicant filed a chamber summons dated 18th March 2019 in which he seeks leave of the court to be enjoined as an interested party so that he can take care of his interests and those of his fellow Muslims whom he says form about 70% of the residents of old Racecourse estate . He states that this suit was filed without the knowledge of the Residents of Old Racecourse Estate. He contends that as far as he is concerned, the Plaintiff/Applicant has no authority to bring this suit and that as far as he knows, it is only one trustee of the association who is alive.
4. The Applicant further argues that the suit property had been allotted to Kariokor Sunni Muslim Trust to enable it put up a Mosque and a Madrassa to cater for Muslim faithful but the allocation was cancelled by then lands Minister Amos Kimunya in 2003 in unclear circumstances. They have since been trying to follow up the issue to see whether the cancellation can be reversed He therefore argues that unless he is enjoined, his interest will not be articulated.

Respondent's Response.

5. The Applicants application has been opposed through a replying affidavit sworn by Sarah Wangari Maina on 25th March 2019. The Deponent of the replying affidavit is one of the trustees of Old Racecourse Residents Group and has always had authority to file and pursue this suit. The Respondents contend that in pursuit of this case they have been doing so with the blessings of a committee elected by the Old Racecourse Residents Association. The Respondents deny that the suit property has never been earmarked for any other purpose other than a playing field for children and resting place for members.
6. The Respondents argue that the Applicant and his group of Muslim brothers have been trying to take away the suit property but their plans failed after the allotment was cancelled. The Respondents argues that the Applicant is trying to bring divisions between Muslims and Christians. The Respondents argue that the suit property is for the benefit of all regardless of tribe or religion. The Respondents argue that this application is only meant to delay the finalization of the case and that the applicant will not suffer any prejudice even if he is not allowed

as an interested party in this suit.

Analysis

7. I have considered the Application by the applicant as well the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the applicant has demonstrated that he should be allowed into this suit as an interested party. It has been held in a long line of cases in the Environment and Land Court, Employment and Labour Relations Court, The High Court, the Court of Appeal, and the Supreme Court that for a party to be enjoined in a suit as an interested party, that person has to demonstrate through the application that there is need for him to be enjoined. He has to demonstrate that he has sufficient legal interest in the suit which is recognizable and that his presence in the suit will assist the court to completely and effectually determine the issues in controversy.

8. In the instant case, this suit has been brought by trustees of Old Racecourse Group who have mandate to file the case. The applicant is the one of the residents. What has emerged from the Applicants application and his submissions is that he has a personal dislike for the trustees and he is trying to pursue a religious agenda which does not augur well for cohesion among people of different religions . If the Applicant has any personal issues with the running of the Association of the Residents Association, he should amicably seek solutions but not through joinder in the suit where his input may not assist the court in determining the issue in controversy.

Conclusion

9. It is clear that the Applicant's application is brought in bad faith with the sole purpose of delaying the finalization of this case which was filed in 2005. This suit had been listed for hearing and this application was solely brought to scuttle the hearing. I therefore find no merit in the Applicant's application which is dismissed with costs to the Plaintiffs/Respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 6th day of February 2020.

E.O.OBAGA

JUDGE

In the presence of:

Mr Munene for Mr Wambua for Plaintiffs, M/s Nafula for M/s Nyang for Defendant and Mr Olembo for proposed Interested Party.

Court Assistant: Hilda

E.O. OBAGA

JUDGE