



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION**

**MISC. CRIMINAL APPLICATION NO. 105 OF 2020**

**DR. SAMUEL KAMAU MACHARIA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The Applicant, Dr. S.K. Macharia, filed an application pursuant to **Articles 24, 40 and 47** of the **Constitution** and **Rules 4(1), 8, 10, 11, 13 and 19** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** seeking the following orders from the court.

- a) A declaration that the continued holding/confiscation of the original Title Deed for L.R. No.12236 by the Director of Criminal Investigations amounts to deprivation of the right to property and is void and/or unlawful.
- b) An order be and is hereby issued compelling/directing the Respondent to unconditionally release and tender the original Title Deed for L.R. NO.12236 to the Applicant.
- c) Such orders as the Honourable Court may deem fit to grant.

The application is supported by grounds in the notice of motion and the supporting affidavit of the Applicant. The application was served upon the Respondent. The Director of Public Prosecution has appeared on behalf of the Respondent. However, he has not yet filed any reply to the application.

Before the application could be heard, Ngengi Muigai, the Proposed Interested Party filed an application to be enjoined in the proceedings. In the application, the said Ngengi Muigai contends that he has proprietary interest in the suit parcel of the land that is comprised of the Title Deed that the Applicant is seeking to have released to him in the present application. In essence, he states that he should be given an opportunity to put his side of the story to the court before any order that may be adverse to his interest in the property is issued. The application by the Proposed Interested Party has been vehemently opposed by the Applicant. Essentially, the Applicant does not want the Proposed Interested Party enjoined in the suit on the basis that he is a stranger to the proceedings.

When the matter was listed for hearing before this court on 7<sup>th</sup> July 2020, Mr. Orengo for the Applicant and Mr. Githinji for the Proposed Interested Party informed the court that they had respectively filed written submission in support of their respective client's position. They requested the court to render its ruling on the basis of the said written submission. This court reserved the application for ruling. However on perusal of the court's record, the court was only able to find the written submission filed on behalf of the proposed interested party. It is on the basis of the said submission that this ruling is being considered. On a side note, on the above date, Ms. Nyamosi for the Respondent informed the court that she did not have instructions to proceed with the application. This court understood Ms. Nyamosi to say that she would not be making any submission, either in opposition or in support of the Proposed Interested Party's application to be enjoined to the proceedings.

Upon the reading of the affidavit sworn by the Applicant in support of the application and the Proposed Interested Party's affidavit in support of his application to be enjoined in the proceedings herein, it became apparent to the court that there exists a protracted dispute between the Applicant, the Proposed Interested Party and others regarding to the ownership of the land that comprises Title known as L.R. No.12236. Several suits have been filed before court. Some of the cases date back to as far as 1991. What is without doubt is that no final decision has been rendered by the court to determine the ownership of the disputed parcel of land. The Proposed Interested Party is justifiably apprehensive that if he is not enjoined to these proceedings, the court may end up inadvertently rendering a decision that may muddle or prolong an already protracted dispute.

This court agrees with the Proposed Interested Party that with the advent of the 2010 **Constitution**, parties who have a legally recognizable interest in the subject matter of a suit should not be locked out of the proceedings but should be given an opportunity to ventilate their concerns to the court. The issue that should be in the mind of the court is whether the enjoinder of the Proposed Interested Party would aid in meeting the ends of justice, and whether, if at all, the Applicant will be prejudiced by such enjoinder. Put differently, this is the question the court (L. A. Achode J.) asked itself when considering a similar application in **Nairobi H.C. Misc. Application No.185 of 2012 Samuel Murithi Watatua & Another vs. Republic**:

***“At this juncture the only question that begs an answer is whether, the ends of justice would be better served by joining the Intended Interested parties to the suit, allowing them to ventilate their side of the story, or by shutting them out altogether because the applicants’ have already been heard in their absence. The backdrop to this question is the reality that the intended interested parties were the victims of a fraud, and that there is a real likelihood of their money, the subject matter of the fraud, being held in the accounts listed above and whose funds the applicants seek to access.”***

This court is of the considered view that the Applicant will suffer no prejudice by the enjoinder of the Proposed Interested Party to these proceedings. Indeed, it may even be beneficial to the Applicant for the proposed interested party to be enjoined in the proceedings, because, if the Proposed Interested Party’s intervention was not to find favour with the court, he would be in a stronger position in his quest to have the title deed of the suit property released to him without further ado. This court holds that it would be in the interest of justice to allow the Proposed Interested Party to be enjoined in these proceedings, because, to do so, will enable the court to properly appreciate the real issues in controversy when considering the application.

In the premises therefore, the Proposed Interested Party’s application to be enjoined in the proceedings is hereby allowed. He shall file a response to the Applicant’s application and serve the same within fourteen (14) days of the delivery of this ruling. The Applicant shall have a right of reply within fourteen (14) days of service. There shall be no orders as to costs. It is so ordered.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JULY 2020.**

**L . KIMARU**

**JUDGE**