



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

HC CIVIL SUIT NO.9”A” OF 2017

AMM PLAINTIFF

VERSUS

JMN RESPONDENT

RULING

1. The intended interested party filed an application dated 26/01/2018 seeking the following orders

a) That he be enjoined in the suit as interested party.

b) That the Court discharges the restraining orders given on 10/01/2018 and confirmed on 23/01/2018 in so far as it affects Plot No. XXX Kianyaga Town.

c) That Plot No. XXX Kianyaga Town be removed from the list of properties forming the matrimonial property.

2. The grounds for seeking the above orders are that the applicant (intended 3rd party) is the registered owner of the said Plot having bought the same from the respondent and the transfer was approved by the County Government of Kirinyaga and therefore it does not form part of the matrimonial property. That the orders touching on the said Plot shall affect him adversely thus prays that he be enjoined as an interested party.

3. The applicant filed replying affidavit stating that the said Plot is a matrimonial property and the respondent cannot purport to sell the same when the case for distribution of properties is still pending in court. That on 12/01/2018, she visited County Government of Kirinyaga and confirmed that the said Plot had not been transferred to the interested party. That the court should therefore treat the Plot as a matrimonial property and the interested party should await the outcome of the matrimonial cause which is still pending in court.

4. The issue which arises for determination is:-

Enjoining an interested party

An interested party is one who has a stake in the proceedings, though he was not party to the cause *ab initio*. He is one who will be affected by the decision of the Court when it is made, either way. The Court should not act in vain by enjoining a party that clearly would have no interest in the subsequent proceedings.

5. In **Skov Estate Limited & 5 others v Agricultural Development Corporation & another [2015] eKLR** Justice Munyao Sila in a persuasive decision stated the following in dismissing an application for the applicants to be enjoined to the suit because they purchased the suit property from the plaintiffs' person;

In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party.

In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be

handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.

6. In **Marigat Group Ranch & 3 others v Wesley Chepkoiment& 19 others [2014] eKLR**

The application before court was for prayers filed by 110 persons seeking to be enjoined as interested parties and Justice Munyao Sila was of the view that;

For purposes of one who wants to be enjoined as an interested party, I think, that such person needs to fit himself into the catch words "whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit...". This is the same position I took in the case of *Joseph Leboo v Director, Kenya Forest Service & Others (Eldoret ELC No 273 of 2013)*.

It should be appreciated that an interested party is not strictly plaintiff or defendant. The contest in a suit is between plaintiff and defendant and if any person has a claim over the subject matter, then such party needs to apply to be enjoined and considered as plaintiff or defendant, and not as interested party. An interested party would be a person who has a close connection to the subject matter of the suit yet not claiming any rights over it.....

It follows therefore that applications seeking to join proceedings as interested parties ought to be handled with caution so that a person does not come to a suit, disguised as an interested party, while all along he/she wishes to agitate rights of his/her own over the subject matter of the suit.

7. These are persuasive decisions which have stated the correct legal position with regard to joining interested parties.

8. This suit was instituted by the petitioner seeking division of matrimonial property. The interested party has filed the application to be enjoined in view of the fact that he is the registered owner of **Plot No. XXX Kianyaga Town**. He has attached minutes dated 13th and 14th February 2017 which approved the transfer from the respondent to him but the applicant has attached a letter dated 12/01/2017 in which the transfer was cancelled since there was a restriction on the said Plot by the applicant. No evidence of transfer documents were submitted or evidence of payments made to the County Government.

9. The interested party is thus a necessary party in this suit for the court to be able to determine all the issues in dispute relating to the suit property. He is a necessary party whose presence before court is required to enable the court to effectively and conclusively adjudicate on all the matters in question in this suit.

10. On the issue of the lifting of the restraining orders, I find that the applicant has not proved ownership of the plot. In view of the matters before this court which is division of matrimonial property, the plot should be secured pending he hearing and determination of the suit.

11. I therefore decline the prayers to discharge the restraining orders. They will remain in force pending the hearing and determination of the suit.

12. In conclusion, I order that:-

1) The applicant Boniface Muchira Mugo will be enjoined in the proceedings as an interested party.

2) I decline to grant prayers 3 & 4 on the Notice of Motion.

3) Costs shall be in the cause.

Dated at Kerugoya this 7th day of March 2019.

L. W. GITARI

JUDGE