



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 92 OF 2013

MESHACK NYAMBERI & 60 OTHERS.....PLAINTIFFS

VERSUS

SARAH KATHUMBI MULWA.....1ST DEFENDANT

BONIFACE MUSYOKI2ND DEFENDANT

NDETI KYAMBINU3RD DEFENDANT

MBUKONI HOLDINGS LIMITED.....4TH DEFENDANT

GEOFFREY MUSYOKA MUSEMBI.....5TH DEFENDANT

KIMSON HOLDINGS.....6TH INTENDED DEFENDANT

EQUITY BANK KENYA LIMITED.....7TH INTENDED DEFENDANT

ROCKS UPENDO CO. LIMITED.....8TH INTENDED DEFENDANT

RULING

1. The two Applications before me are dated 13th May, 2019 and 18th October, 2018. In the Notice of Motion dated 13th May, 2019, the Plaintiffs are seeking for the following orders:

a. That the Plaintiffs/Applicants herein request to have the 7th Intended Defendant/Respondent to be enjoined in this matter since they are the registered chargee of the suit property.

b. That the Plaintiffs/Applicants herein request to have the 8th Intended Defendant/Respondent to be enjoined in this matter pursuant to the Ruling of the Senior Principal Magistrate's Court at Mavoko on ELC No. 13 of 2018.

c. That the costs of this Application be provided for.

2. The Application is supported by the Affidavit of the 14th Plaintiff who has deponed that the Plaintiffs bought the sub-divisions of a parcel of land from Mbukoni Holdings Limited; that Mbukoni Holdings sold the said land to the Plaintiffs and that the Plaintiffs have settled on their respective portions of land.

3. The 14th Plaintiff deponed that they were in possession of their respective parcels of land until the 6th Intended Defendant and his accomplices started harassing them; that the Intended 6th Defendant secured a loan from the Intended 7th Defendant as against the title of the suit property and that the 6th and 7th Defendants should be enjoined in these proceedings because they have acquired an interest in the suit property.

4. The 14th Plaintiff further deponed that the 8th Intended Defendant should be enjoined in the suit because he sued one of the Plaintiffs, Paul Ringera, seeking possession and occupation of the land owned by the said Paul Ringera.

5. The 14th Plaintiff finally deponed that the 8th Intended Defendant should be enjoined in the suit pursuant to the Ruling of the court in Mavoko SPMCC ELC No. 13 of 2018; that the inclusion of the 8th Defendant will enable the court get rid of a multiplicity of suits and that no prejudice will be suffered by the Defendants if the orders are granted.
6. In the Replying Affidavit, one Joseph Kimani Mbugua, the 6th Intended Defendant's Director, deponed that vide an Application dated 13th July, 2017, the Plaintiffs herein sought to be enjoined in the suit as Interested Parties in Machakos ELC No. 311 of 2017; that the Plaintiffs have no reasonable cause of action against "them" and that the Plaintiffs have no *locus standi* to bring any suit as against them.
7. According to Mr. Mbugua, they brought the suit land for valuable consideration and after conducting due diligence; that the Plaintiffs have not annexed an amended Plaint to demonstrate the specific reliefs or remedies they will be seeking against them and that their claim is land known as Mavoko Town Block 3/36365 and not what the Plaintiffs are claiming.
8. Mr. Mbugua deponed that the 4th Defendant was issued with a title for parcel of land known as Mavoko Town Block 3/1968; that the register for Mavoko Town Block 3/1968 was closed on sub-division and gave raise to two title numbers being Mavoko Town Block 3/36364 and 36365 and that they could not obtain vacant possession of the suit premises and therefore sued the Defendant in Machakos ELC No. 311 of 2017 in which the Defendant admitted their claim.
9. Mr. Mbugua finally deponed that they have charged the land they bought and that they are the *bona fide* Purchasers for value of land known as Mavoko Town Block 3/36365.
10. In the Application dated 18th October, 2018, the Plaintiffs have sought to have the Intended 6th Defendant enjoined in this suit pursuant to the Ruling of the court in ELC No.311 of 2017.
11. The Application is premised on the grounds that the Plaintiffs are the legal owners of parcel of land Mavoko Town Block 3/1968; that the Intended 6th Defendant was allocated a new title in respect of the same land following a consent settlement in ELC No. 311 of 2017 and that the Plaintiffs were not aware of the proceedings in ELC No. 311 of 2017.
12. The response of the 6th Intended Defendant's Director in respect to the Application is similar to the response he made in regard to the Notice of Motion dated 13th May, 2019 which I have summarized above. Both the Plaintiffs and the 6th Intended Defendant filed their written submissions and authorities which I have considered.
13. This suit was commenced by way of a Plaint dated 18th October, 2013. In the Plaint, the Plaintiffs averred that between 1997-2013, they purchased several portions of land known as Mavoko Town Block 3/1968 from the 4th Defendant; that the said land was originally registered under Lukenya Ranching and Co-operative Society Limited as plot number 478 and that the 4th Defendant purchased the said plot number 478 from one Ruth Munyiva Musyoki, deceased.
14. In their prayers, the Plaintiffs are seeking for a declaratory order that they are the legal proprietors as Purchasers for value of parcel number Mavoko Town Block 3/1968.
15. In their Defence, the 1st, 2nd and 3rd Defendants averred that parcel of land number Mavoko Town Block 3/1968 is registered in the name of the 1st Defendant and Ruth Munyiva Musyoki (*deceased*); that the 4th Defendant has never purchased the suit land from the registered proprietors as alleged and that the Plaintiffs' claim should be dismissed.
16. In their Counter-claim, the 1st, 2nd and 3rd Defendants averred that the Plaintiffs trespassed on plot number Mavoko Town Block 3/1968 and that they should be evicted from the said land.
17. The Plaintiffs herein filed an Amended Plaint on 2nd April, 2014 in which they joined the 5th Defendant who had allegedly bought the suit property from the 1st, 2nd and 3rd Defendants. Indeed, in the Amended Defence, the 1st, 2nd and 3rd Defendants admitted that they had sold the suit property to the 5th Defendant with the approval of the High Court vide Succession Cause No. 1020 of 2012.
19. The Plaintiffs are seeking to enjoin the Intended 6th and 7th Defendants in these proceedings. The Intended 6th and 7th Defendants purchased and charged land known as Mavoko Town Block 3/36365 respectively, which, as admitted by the Intended 6th Defendant, is a sub-division of the suit property.
19. I have perused the official search and noted that indeed, parcel number 36365 was registered in favour of the 6th Defendant on the 7th January, 2015 and charged to the 7th Defendant on 2nd July, 2018 for a loan of Kshs. 20,000,000/=. Indeed, the said parcel of land was sold to the intended 6th Defendant and charged to the Intended 7th Defendant during the pendency of this suit.
20. I have also perused the Ruling of the court in Machakos ELC No. 311 of 2017. The said Ruling arose from the Application of the Plaintiffs herein. In the said Applications, the Plaintiffs herein sought to be enjoined in Machakos ELC No. 311 of 2017 in which the Intended 6th Defendant was the Plaintiff.
21. After considering the Application for joinder in Machakos ELC No. 311 of 2017, this court held as follows:

“12. Considering that the settlement of this suit between the Plaintiff and the Defendant does not affect the Applicants' claim

in ELC. No. 92 of 2013, and this suit having been settled as between the Plaintiff and the Defendant, the Applicants should enjoin the parties herein in ELC. No. 92 of 2013 which is still pending. The Applicants cannot join in this suit which has since been settled, but instead prosecute the pending suit.”

22. It is on the basis of the Ruling by this Court in Machakos ELC No.311 of 2017 that the Plaintiffs herein have sought to enjoin the 6th and 7th Defendants in this suit.

23. The Intended 6th Defendant’s Director has admitted that the land the Intended 6th Defendant is claiming is a sub-division of the suit property. Indeed, the 6th Defendant acquired the said land during the pendency of this suit.

24. In the case of *King’ori vs. Chege & 3 Others (2002) eKLR*, the court held that the guiding principles for the joinder of a party to a suit is: he must be a necessary party; he must be a proper party; the ultimate order or decree cannot be enforced without his presence in the matter; and his presence is necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

25. Indeed, as was held by Gikonyo J. in the case of *Zephir Holdings Limited vs. Mimoso Plantations Limited & Others (2014) eKLR*, the court has a wide discretion to either order *suo moto* for a party to be impleaded whose presence may be necessary to enable the court effectively and completely adjudicate and settle all questions involved in the suit.

26. Having considered the Affidavits and annexures before me, I am convinced that the Intended 6th and 7th Defendants are necessary parties in this matter because the 6th Intended Defendant acquired a sub-division of the suit property during the pendency of this suit, and then charged it to the 7th Intended Defendant.

27. Indeed, any order that this court will make in respect to the mother title will affect the interests of the registered proprietors of the two sub-divisions. Furthermore, the Intended 6th Defendant has issued a demand letter requiring the Plaintiffs to vacate a portion of the suit property. That calls for investigation by this court on who between the Plaintiffs and the Intended 6th Defendant is entitled to the suit land.

28. Considering that the Intended 7th Interested Party charged the portion of the suit property for a loan advanced to the 6th Intended Defendant, it is a necessary party in this suit. I say so because the 7th Intended Defendant has encumbered the suit property and an order in favour of the Plaintiffs will affect its interests on the suit property. Consequently, it should be heard before the court can pronounce itself on the dispute.

29. The Plaintiffs are also seeking to join the 8th Intended Defendant in the suit because he has sued one of the Plaintiffs in Mavoko SPMCC ELC No. 13 of 2018. However, the court in Mavoko SPMCC No. 13 of 2018 struck out the suit. That suit therefore does not exist.

30. The Plaintiffs have not annexed any documents to show the proprietary interest of the Intended 8th Defendant. Consequently, I decline to order for the joinder of the Intended 8th Defendant in this matter.

31. For the reasons I have given above, I allow the Plaintiffs’ Applications dated 18th October, 2018 and 13th May, 2019 as follows:

a. The 6th and 7th Intended Defendants be and are hereby enjoined in this suit as Defendants.

b. The Plaintiffs to file and serve the Further Amended Plaint enjoining the 6th and 7th Defendants in this suit within fourteen (14) days of this Ruling.

c. The costs of the two Applications to be in the cause.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 13TH DAY OF MARCH, 2020.

O.A. ANGOTE

JUDGE