



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA

ELC CASE NO. 128 OF 2012

AHMED MOHAMMED KHALID PLAINTIFF

VERSUS

MARY NDUTA WAFULA1ST DEFENDANT

CAROLYNE AKINYI WAFULA 2ND DEFENDANT

MUNICIPAL COUNCIL OF BUNGOMA 3RD DEFENDANT

AND

COLLINS MUNYASIA WAFULA 1ST INTERESTED PARTY

DERRICK MUGANDA WAFULA 2ND INTERESTED PARTY

VALTARE ANDATI WAFULA 3RD INTERESTED PARTY

RULING

It is an un-disputed fact that the land parcel **NO BUNGOMA TOWN/291** (the suit property) is currently registered in the names of **CAROLINE AKINYI WAFULA** who is the 2nd defendant herein. That property is the subject of this suit in which the plaintiff, as per the further amended plaint dated 27th July 2018, seeks Judgment that **MARY NDUTA WAFULA** (the 1st defendant) do remove the caution lodged thereon and that the 2nd defendant surrenders the lease to facilitate its transfer to the plaintiff or in the alternative, that the plaintiff is entitled to compensation by way of refund of the sums spent in renovating it. The plaintiff's claim is based on the fact that he bought the suit property in a public auction. This has been denied by the 2nd and 3rd defendants in their amended defences dated 7th April 2018 and 23rd August 2018 respectively.

It is also not in dispute that as per the Certificate of Search dated 27th November 2012, the 2nd defendant is registered as the proprietor of the suit property **"to hold in trust for other 6 children, brothers and sisters."**

COLLINS MUNYASIA WAFULA, DERRICK MUGANDA WAFULA and **VALTARE ANDATI WAFULA** (herein the 1st, 2nd, and 3rd interested parties) have, by their Notice of Motion dated 13th December 2019 sought to be enjoined as interested parties in this suit on the basis that the suit property belonged to their late father **BARTHOLOMEO WAFULA** who had rented it to the plaintiff.

The 2nd defendant has opposed the application and filed a replying affidavit dated 17th December 2020 (must have meant 17th December 2019). In paragraph 2 of the said replying affidavit, the 2nd defendant has deponed that she is in **"total opposition to the said application."** However, in paragraph 3 of the said replying affidavit, the 2nd defendant has deponed as follows: -

"That the Applicants has (sic) failed to make material disclosure as regards the ownership status of the property in that, as clearly shows on the title documents, the property is registered in my names and I do hold the same in trust for my siblings, the Applicants included"

And in paragraph 4, she adds: -

4: "That the property was initially registered in the name of my late father BARTHOLOMEW WAFULA LULE and before his demise, he transferred the same onto my names to hold on behalf of my siblings as indicated herein above."

It is clear from the above averments that the interest of the interested parties in the suit property is conceded by the 2nd defendant. The plaintiff, 1st defendant and 3rd defendant do not oppose the application. It is in light of the above averments by the 2nd defendant and the fact that the other parties do not oppose the application that when the parties appeared before me on 26th February 2020 for purposes of canvassing the same, I implored them to try and agree on the same. Surprisingly, **MR OKATCHI** counsel for the 2nd defendant and whose brief was being held by **MR WERE** insisted that the application be determined on the basis of the parties' respective affidavits.

While it is the Constitutional right of parties to have their disputes determined by the Court, it is also in the interest of the expeditious disposal of cases that in appropriate situations, counsel should advise their clients to concede to obvious applications such as this one. Judicial time is scarce. So too are other resources. I don't think they should be expended in determining applications which, with proper advice, the parties can agree on so that the Court can devote its time determining the real disputes in a case. This is one such application. The title documents clearly show that the 2nd defendant is registered as the proprietor of the suit property in trust for her siblings. She has admitted as much in her replying affidavit. Yet her counsel has insisted that this Court delivers a ruling on the same. Surely this precious judicial time could have been spent by the parties complying with the pre – trial directions so that the real dispute in this case can be expeditiously determined. I implore counsel to always look at the broader picture when faced with such applications.

The bottom line really is that although there is a replying affidavit ostensibly filed in opposition to the application dated 13th December 2019, that application is in fact conceded by the 2nd defendant who was the only person that has **“objected”** to the same. And even if there was any real objection to the same, it is unlikely that it would have carried the day given the uncontroverted fact that the Certificate of Search clearly shows that the 2nd defendant holds the suit property in trust for her siblings. **Order 1 Rule 10(2) of the Civil Procedure Rules** empowers the Court to enjoin any person in proceedings if his presence before the Court: -

***“..... may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions in the suit*”**

For a person to be enjoined in a suit, he must demonstrate an interest that is identifiable in the subject of the suit. It must also be shown that if the party is not enjoined, orders prejudicial to his interest may be made in his absence. To avoid a multiplicity of suits, it is important to bring all such persons on board so that all issues concerning the matter in dispute are determined once and for all. As persons for whom the suit property is held by the 2nd defendant in trust, a fact that the 2nd defendant has readily conceded, there can be no clearer case for granting the orders sought by the intended interested parties.

The up – shot of the above is that I make the following orders with regard to the application dated 13th December 2019: -

- 1. The application is allowed.**
- 2. The Interested parties to file and serve their pleadings on all the other parties within 14 days of this ruling.**
- 3. As the 2nd defendant and the Interested parties are siblings, there will be no orders as to costs.**
- 4. I can see from the valuation report dated 24th November 2007 that the suit property was valued at Kshs. 2,500,000/=. I take the view that its current value must still be within the pecuniary jurisdiction of the Chief Magistrate's Court. I therefore, intend to make orders transferring this suit to that Court unless the parties convince me otherwise.**
- 5. Mention on 15th June 2020 for appropriate orders.**

Boaz N. Olao.

J U D G E

27th May 2020.

Ruling dated, delivered and signed at Bungoma this 27th day of May 2020.

Boaz N. Olao.

J U D G E

27th May 2020.

This Ruling was due on 11th June 2020. However, in view of the measures restricting Court operations due to the **COVID – 19** pandemic, and in light of the directions issued by the Honourable Chief Justice on 23rd April 2020, it is brought forward and delivered through electronic mail with notice to the parties.

Boaz N. Olao.

J U D G E

27th May 2020.