



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC MISC CAUSE NO. 458 OF 2017

MENELIK HOUSE LIMITED.....PLAINTIFF

VERSUS

JOHN MBUGUA.....RESPONDENT

FRANCIS ODUMBE OSODO.....PROPOSED INTERESTED PARTY

RULING

1. This is the notice of motion dated 26th September 2018 brought under Section 1A, 1B, 3, 3A order 22 rule 22 of the Civil Procedure Act, Order 1 Rule 10(2), Order 51 rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions.
2. It seeks orders:-
 - (1) *Spent.*
 - (2) *That the honourable court be pleased to enjoin the proposed interested party as a party in this suit.*
 - (3) *That this honourable court be pleased to grant leave to the proposed interest party to file a defence.*
 - (4) *That this honourable court be pleased to set aside/stay any order that has been issued in respect of LR No. 1/580 pending the hearing and determination of this suit.*
 - (5) *That costs of this application be in the cause.*
3. The grounds are on the face of the application and are set out in paragraphs (a) to (n).
4. The application is supported by the affidavit of Francis Odumbe Osodo the proposed interested party/applicant, sworn on the 26th September 2018.
5. The application is opposed. There is a replying affidavit sworn by Jane Agoki, a director of the plaintiff, sworn on the 9th May 2019 and a further affidavit sworn on the 12th June 2019.
6. On the 26th April 2019, the court directed that the application be canvassed by way of written submissions.
7. It is the plaintiff's/respondent's submissions that this court in its ruling of 13th March 2013 pronounced the plaintiff as the registered proprietor of LR No. 1/580/Nairobi along Ngong road. Section 26 of the Land Registration Act, 2012 grants the owner of a title absolute and indefeasible ownership of the property. It has put forward the case of **Gichinga Kibutha vs Caroline Nduku [2018] eKLR**. Further that the proposed interested party cannot have any interest in the said property.
8. Order 40, rule 7 of the Civil Procedure Rules 2010 provides for setting aside injunction by the court. It has put forward the case of **John Bosco Muinde Kamali & Others vs Stephen Kaliti & Another, Muasya M Makai & 9 Others (proposed interested parties) [2019] eKLR**. The application ought to be dismissed with costs.

9. It is the proposed interested party's submissions that he is the beneficial owner of LR NO 1/580 which he acquired through transmission from his late parents. He never entered into any form of sale transaction regarding the suit property with the plaintiff. He is a necessary party in this suit. He has put forward the cases of **Shirvling Supermarket Ltd vs Jimmy Ondicho Nyabuti & 2 Others [2018] eKLR** which adopted with approval the holdings by the Uganda Supreme Court in the case of **Deported Asians Property Custodian Board vs Jaffer Brothers Ltd [199] 1EA 55 (SCU)**. He has also put forward the case of **Meme vs Republic [2004] KLR 637**.

10. It is further his submission that the plaintiff forged the sale and transfer documents claiming to have bought the suit property from his parents. That the defendant is a bonafide purchaser of the suit property and that the joinder will not only result in the complete settlement of all questions involved in the main suit but will also provide protection of the proprietary rights of the defendant who will be adversely affected in law and his right to property guaranteed under Article 40 of the Constitution violated. He prays that the application be allowed.

11. I have considered the notice of motion and the affidavit in support. I have also considered the affidavits in response, the submissions made on behalf of the parties and the authorities cited. The issues for determination are:-

(i) Whether the interested party should be enjoined in the suit.

(ii) Whether the injunction granted by the court ought to be set aside.

(iii) Who should bear costs?

12. **Order 1 rule 10 (2)** of the Civil Procedure Rules, 2010 provides that:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

13. It is not in doubt that the plaintiff is the registered owner of the suit property. The proposed interested party is the son of Jerry Shaphan Osondo and Sella Awino Osodo, the previous owners. He claims to have sold the suit property to the defendant and that the plaintiff forged the sale agreement and transfer. I am of the opinion that he is a necessary party to these proceedings. He has a right to give his side of the story and defend his interest in the property. I will therefore allow the application to this extent only.

14. **Order 40 rule 7** of the Civil Procedure Rules provides that:-

“Any order for an injunction may be discharged or varied, or set aside by the court on application made thereto by any party dissatisfied with such orders”.

The court upon hearing the plaintiff and the defendant granted the orders of injunction on 18th December 2018. The proposed interested party, was not a part then. He cannot ask the court to arbitrarily review and/or set aside its orders.

15. I find that no sufficient grounds have been advanced to warrant this court to set aside the orders of 18th December 2018. I therefore decline to set aside the orders of injunction granted on 18th December 2018.

16. In conclusion the application dated 26th September 2018 is therefore only allowed in the following terms.

(a) That the proposed interested party is hereby enjoined as a party to this suit.

(b) That leave is hereby granted to the proposed interested party to file a defence, list of documents and/or witnesses within sixty (60) days from the date of this ruling.

(c) That costs of this application be borne by the interested party.

It is so ordered.

Dated, signed delivered in Nairobi on this 21ST day of MAY 2020.

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Respondent

