



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT THIKA
ELC 431 OF 2017
(FORMERLY NAIROBI 991 OF 2016)

SORBONNE INVESTMENTS LTD.....PLAINTIFF/RESPONDENT

VERSUS

ANGELA MWONGELI KITHANZE.....1ST DEFENDANT/RESPONDENT

ERIC KAWA.....2ND DEFENDANT/ RESPONDENT

CALEB OKEMWA.....3RD DEFENDANT/ RESPONDENT

ESTHER WANGARE WAIHERA.....4TH DEFENDANT/ RESPONDENT

NAHASHON KAIRO.....5TH DEFENDANT/ RESPONDENT

FRANCIS NJUKI MUNYAO.....6TH DEFENDANT/ RESPONDENT

WILFRED NGUMBAO.....7TH DEFENDANT/ RESPONDENT

ALICE NJERI MUTHONI.....8TH DEFENDANT/ RESPONDENT

PETER KUNGU.....9TH DEFENDANT/ RESPONDENT

EUNICE WAIHERA KURIA.....10TH DEFENDANT/ RESPONDENT

PAUL KYALO.....11TH DEFENDANT/ RESPONDENT

AND

DAVID NDERI KAMAU.....INTERESTED PARTY/APPLICANT

RULING

The matter for determination is the Notice of Motion Application dated 23rd April 2019 by the Interested Party/ Applicant seeking for orders that;

1. THAT the interested party herein be enjoined in the suit.
2. THAT the Interested party be given leave to file his Defence and/or Counter Claim.
3. THAT Costs be in the cause.

The Application is premised on the grounds that the Interested Party/ Applicant is the one who sold the suit properties to the Defendants/

Respondents. That there was a mapping problem on the ground, a problem that has since been resolved. Further that the Defendants are not in the Know of what the [problem was and cannot adequately responded to the Plaintiff's/Respondent claim. That being the owner, the Interested Party has all the information pertaining to his parcel sold to the Defendants.

In his supporting Affidavit, **David Nderi Kamau**, the Interested Party averred that he is the owner of **UNS Residential Plot Thika Municipality (FR No. 416/136) Parcel No. 879** . He averred that he later subdivided the suit property into **50ft by 80ft**, which he sold to the Defendants herein amongst others.

It was his contention that there has been an overlap between his parcel of land and **L.R Thika Municipality Block 29/310**, claimed by the Plaintiff/ Respondent and that the said default has now been rectified after vigorous exercise by the Director of Surveys and Director of Planning. He contended that he is the only one who is capable of responding to issues raised by the Plaintiff/ Respondent.

The Application is opposed and the Plaintiff/ Respondent filed a Replying Affidavit sworn by **Judy Rebecca Momanyi**, its head of legal and Corporate Affairs department on **13th May 2019** and averred that the Plaintiff/ Respondent is the registered owner as lessee of **L.R Thika Municipality Block 29/370**, and therefore entitled to the possession of the suit land. She averred that vide a search conducted on **6th April 2016**, it was confirmed that the Plaintiff/ Respondent was registered as the sole owner of the suit property. It was her contention that the Application is an afterthought, constitutes a gross abuse of the Court's process, it is frivolous and is just but a delaying tactics by the Defendants who want to continue depriving the Plaintiff/ Respondent its rightful use and enjoyment of the parcel of land. Further that the interested party sought to be enjoined does not fall within the definition of an Interested Party and that the Interested Party is not interested in the subject matter of the suit but would instead be seeking to bring a different suit of overlapping.

She further averred that the Application is based on claims of overlapping raised by the National Land Commission that are yet to be proven Further that there is no report from the District Surveyor with findings that the suit property overlaps into **Block 6/879**. She further averred that Registry Index Map for block 29 indicate no overlap and going by the available maps, the alleged overlap does not exist. He further averred that as per the Plaint, the Plaintiff's claim is against the Defendants for trespass to land involving Title No. **Thika / Municipality Block 29/370** belonging to the Plaintiff whereas the Application raises totally different issues of overlap relating to **Thika Municipality Block 6/879**.

She contended that the Interested Party had already sold his land hence transferred his interest to the Defendants thus placing them in a better position to respond. She averred that the claim in question is in relation to trespass and that the Application to enjoin the Interested Party is just a method by the Defendants to deviate from the main cause.

The Application was canvassed by way of written submissions, which the Court has now carefully read and considered. The issue for determination is **whether the Interested Party is entitled to the orders sought**.

Though the Plaintiff/ Respondent has contended that it is the Defendants/Respondents who have sought the enjoinder of the Interested Party/ Applicant to this suit, the Application was filed by the Interested Party/ Applicant himself. In his Application the Applicant has sought to be enjoined in this suit and his reasons for being enjoined in the instant suit is that he is the one who sold the suit property being claimed by the Defendants/ Respondents. It is further the Applicant's contention that the Plaintiff's/ Respondent's property **Thika Municipality Block 29/370** has overlapped his property **Thika Municipality Block 6/879** which he had sold to the Defendants/ Respondents and that it is only him who has the Knowledge of the facts of the case and therefore the only person capable of effectively replying to the instant suit.

However, it is the Plaintiff's/ Respondent's contention that the Interested Party/ Applicant seeks to bring a different cause of action to that which is before Court. The Plaintiff/ Respondent contends that the Defendant is only employing delaying tactics and that there is no evidence that the Applicant is the one that sold the suit property to the Defendant. Further that the property being claimed by the Interested Party/ Applicant is totally different from their property.

The Instant suit was filed on **3rd October 2016**. The Court has perused the Court file and noted that despite the Defendants/ Respondents being given numerous opportunities to file their response to the claim, they have not done so. Further the Court has also perused the Plaint and notes that the Plaintiff/ Respondent has sought for orders against the Defendants/ Respondents claiming that they had trespassed upon its property being **Thika Municipality Block 29/370**. It has further contended that the Defendant has remained in occupation and even erected illegal structures.

The Instant Application was filed in **2019** around **4 years** after the instant suit had been filed. As already held by the Court above there is no response by the Defendants/ Respondent in this instant suit. In short there is no defence by the Defendants/ Respondent that they are in the suit property legally having bought the land from the Interested Party/ Applicant. In his Supporting Affidavit, the Interested /Party has annexed various documents and there is one that states that the District Surveyor had made a finding that the Plaintiff's/ Respondent's suit property was overlapping his property. Further a letter of allotment that involve **Thika Municipality Block 6/879**. However, this suit involves **Thika Municipality Block 29/370**. The Plaintiff/ Respondent has alleged that it is the registered owner of **Thika Municipality Block 29/370**. While this Court recognizes that it is important that all parties that have an interest in a matter or whose presence may be necessary for the Court to efficiently adjudicate upon the matter, It is the Court's considered view that the Interested/Party / Applicant has not demonstrated how his presence in the suit will enable the Court to effectively adjudicate upon the matter nor has he shown that he has any interest in the matter herein.

The guiding provision of law on enjoinder of an interested party is **Order 1 Rule 10(2)** of the **Civil Procedure Rules** which states:-

“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”.

Further the Court is persuaded by the findings in the case of Moses Wachira ...Vs... Niels Bruel & 2 Others [2015] eKLR wherein the Court quoted the Supreme Court decision in Communications Commission Of Kenya And 4 Others ...Vs... Royal Media Services Limited & 7 Others Petition No. 15 OF [2014]eKLR where the Court pronounced itself on who an Interested Party is and held as follows:

“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court’s decision in the Mumo Matemo case where the court (at paragraphs 14 and 18) held:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party’s state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?”

Therefore, it is evident that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court.

Further, it is evident that such joinder or amendment should be freely allowed if such amendment or joinder do not result in prejudice or injustice to the other party. See the case of Central Kenya Ltd...Vs...Trust Bank & 4 Others C.A No.222 of 1998, where the Court held that:-

“All amendment should be freely allowed at any stage of the proceedings provided that the amendment or joinder as the case may be will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs”.

In this instant as already held by the Court above, the Interested Party Applicant has not satisfied the Court that he has a stake in the proceedings nor has he stated his relevance in the proceedings. It is further not in doubt that the Interested Party/ Applicant will not suffer any prejudice if he is not admitted to the proceedings. This is so as it is trite that when a Party’s title is in question the said party is required to show the root of his title. The Defendant’s would have sought to explain the root of their title and sought documentation from the Interested Party at the right time.

Further this Court notes that while the Case was filed in 2016, the Application was filed in 2019 and this is after the case had been set down for hearing severally. There has been no indication from the Interested Party whether or not he was aware of the instant suit The Interested Party has also sought to be allowed to file his Defence and Counter Claim and his witness statement. This would mean going through pretrial Conference all over again. It is the Court’s considered view that the Plaintiff/ Respondent would be prejudiced greatly by having its matter delayed further. One of the tenets of Justice is that a matter is resolved expeditiously and in this instant, the same would not happen if the instant Application is allowed. The Court therefore holds and finds that the Application is **not** merited

Having carefully considered the facts of this case, the affidavits filed by both parties, the rival submissions herein and the relevant provisions of law, and authorities cited, this Court finds that the Applicant is not a necessary party and has no interest over the suit property and should therefore not be enjoined as an interested party at all.

The Upshot of the foregoing is that the **Notice of Motion Application** dated 23rd April 2019, is **not** merited and is disallowed entirely with costs to the Plaintiff/ Respondent.

It is so ordered.

Dated, signed and Delivered at Thika this 14th day of May 2020

L. GACHERU

JUDGE

Court Assistant.....

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Ruling** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

By Consent of :

M/s Momanyi Advocate for the Plaintiff/Respondent

..... for the 1st to 11th Defendant/Respondent

.....for interested Party/Applicant

L. GACHERU

JUDGE