



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

MISC. APPLICATION (J.R) NO. 2 OF 2018

REPUBLIC.....APPLICANT

VERSUS

NDORO RITHO Alias NDORO NJINJO.....1ST RESPONDENT

WANGURU LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

WANGURU S.R.M. COURT.....3RD RESPONDENT

AND

SAMUEL KANJA KINUNU.....EX-PARTE APPLICANT

JAMII BORA BANK.....INTENDED INTERESTED PARTY

RULING

The application before me is the Notice of Motion dated 7th July 2019 brought pursuant to **Section 36, Rule 10, Order 51 Rule 1 and Order 1 of the Civil Procedure Rules, Section 1A and 1B of the Civil Procedure Act**. The Applicant is seeking the following orders:

(1) Spent.

(2) That the Applicant herein, Jamii Bora Bank, be enjoined as a party to the suit.

(3) That the ruling of this Honourable Court delivered on 20th January 2015 by Hon. Lady Justice H.I. Ong'udi conferring the title property Land Reference No. MWEA/MUTITHI/SCHEME/121 to Samuel Kanja Kinunu be set aside.

(4) That the cost of this application be provided for.

The application is supported by grounds apparent on the face of the said application and the affidavit of one Christine Wahome sworn the same date. The supporting affidavit is further supported by numerous annexures. The said application is not opposed as no replying affidavit or grounds of opposition were filed. When the case was called out, there was no response on the part of the Respondents.

EX-PARTE APPLICANT'S CASE

The Ex-parte Applicant through its Legal Manager stated that by a letter of offer dated 21st July 2015, it agreed to advance a finance facility of Kenya Shillings Twenty four million, five hundred thousand only (Ksh. 24,500,000/=) to one Martin Robin Kinuthia which was secured by a legal charge over property Land Reference Number MWEA/MUTITHI/SCHEME/121 owned by the said Martin Robin Kinuthia. The Ex-parte Applicant further deponed that the said Martin Robin Kinuthia defaulted in repaying the loan as a result of which the Bank's statutory power of sale crystallized and was exercised in compliance with the law. The Ex-parte Applicant contends that on 14th September 2017, the property was advertised for sale by way of a public auction and was sold to one James Ndungu Kabiru who was the highest bidder for a sum of Ksh. 15,500,000/=. The Ex-parte Applicant further contends that there was a deficit of Ksh. 23,352,572.31/= which the Applicant is currently pursuing against the said Martin Robin Kinuthia vide HCCC No. 186 of 2018. It is further deponed that the Kirinyaga District Land Registrar has to-date failed to effect the transfer of the property to the said James Ndungu Kabiru having purchased the same at a public auction. She deponed that the Ex-parte Applicant commenced Judicial Review proceedings at Kerugoya being Misc. Application No. 3 of 2018 seeking an order of mandamus to compel the District Land Registrar, Kirinyaga to transfer the suit property Land Reference No. MWEA/MUTITHI/SCHEME/121 to James Ndungu Kabiru. The Ex-parte Applicant stated that through the replying affidavit by one Julius K. Muthee, the Kirinyaga District Land Registrar sworn on 22nd March 2019 in response to the Applicant's J.R. Application in Misc.

Application No. 3 of 2018, it came to her knowledge that a ruling had been delivered on 20th January 2015 by Hon. Lady Justice H.I. Ong'udi conferring the title to the suit property Reference No. MWEA/MUTITHI/SCHEME/121 to SAMUEL KANJA KINUNU. She stated that the effect of the Ruling of 20th January 2015 is that the suit land reverted back to Samuel Kanja and all subsequent entries on the green card ought to have been cancelled. However, the same were never cancelled. The Ex-parte Applicant also deponed that it advanced one Martin Robin Kinuthia a loan of Kenya Shillings 24,500,000/= and that the said amount was secured using the said property which is registered as entry No. 19 – 21 in the name of Martin Robin Kinuthia on the green card. It is further deponed that the said orders were issued without according the Interested party an opportunity to be heard as required in law. The Ex-parte Applicant contends that unless the Court urgently intervenes, enjoins the Applicant as a party and sets aside the order issued on 20th January 2015, the Ex-parte Applicant herein will suffer huge and irreparable damages and losses.

RESPONDENTS CASE

The Respondents did not file any response to the Ex-parte Applicant's application.

ANALYSIS AND DETERMINATION

I have considered the Ex-parte application, the supporting affidavit and the law. The broad principles governing an application for joinder of suit or proceedings is founded on **Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (1)** which defines an interested party as follows:

“Interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation”.

Rule 7 (2) provides that a Court may on its own motion join any interested party to the proceedings before it. The import of the law is that the Court can, either on an application made by any interested party on its own motion direct any person as party to be enjoined in the proceedings. An application for joinder is a discretionary power which must be exercised judicially based on sound principles. Of paramount consideration to be considered is to enable the Court to deal with the matter brought before it and to avoid multiplicity of suits. The test to be applied in determining whether or not to allow an application for joinder is to establish whether such an applicant has an interest or stake in the case. In addition, the Court must satisfy itself whether the orders sought in the suit would directly and legally affect the party seeking to be enjoined. It is a mandate of the Court to ensure that as far as possible, all matters in controversy between the parties should be completely and effectually determined and any possible issue of multiplicity of legal proceedings concerning any of the matters and parties involved are avoided. The proposed interested party has laid foundation on the financial facility granted to one Martin Robin Kinuthia who was registered as proprietor of the suit property L.R. No. MWEA/MUTITHI/SCHEME/121 on 21/7/2015. The Applicant/intended interested party has also deponed on oath that it has come to their knowledge that a ruling had been issued on 20/1/2015 by Hon. Lady Justice Ong'udi conferring the title property which was used by the said Martin Robin Kinuthia as a security and which title was charged as a collateral to one Samuel Kanja Kinunu. Applying the principles for joinder of parties as laid down under **rule 2 and 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013**, I find and hold that the Applicant has brought himself properly within the confines of the law to warrant the grant of the orders sought.

In the final analysis, the application dated 7th July 2019 is allowed in the following terms:

- (1) The Applicant, Jamii Bora Bank be and is hereby enjoined as a party to this suit.***
- (2) The Ruling of this Honourable Court delivered on 20th January 2015 by Hon. Lady Justice H.I. Ong'udi conferring the title property Land Reference No. MWEA/MUTITHI/SCHEME/121 to Samuel Kanja Kinunu be and is hereby set aside.***
- (3) The costs of this application to be costs in the cause.***
- (4) The Interested party to file and serve their response to these proceedings within 14 days from today.***

READ, DELIVERED AND SIGNED IN OPEN COURT AT KERUGOYA THIS 8TH DAY OF MAY 2020.

E.C. CHERONO

ELC JUDGE

In the presence of:

1. Mr. Asimwe holding brief for Mugisha for the Applicant
2. Mbogo – Court clerk.