



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENT AND LAND COURT CASE NO. 139 OF 2013

NJUWANGU HOLDINGS LTD PLAINTIFF

VERSUS

LANGATA K.P.A NAIROBI WEST TRADING CO. LTD 1ST DEFENDANT

JOHN OCHIENG OCHOLA 2ND DEFENDANT

DOUGLAS OWINO 3RD DEFENDANT

LYDIA AKOTH 4TH DEFENDANT

(2nd, 3rd and 4th defendants sued on their own behalf and as the

Chairman, Secretary and Treasurer respectively of the

LANGATA K.P.A NAIROBI WEST SELF HELP GROUP).

COMMISISONER OF LANDS 5TH DEFENDANT

ATTORNEY GENERAL 6TH DEFENDANT

AND

MOSES NJOROGEPROPOSED 1ST INTERESTED PARTY/APPLICANT

ABDULKADIR H. ABDULKADIRPROPOSED 2ND INTERESTED PARTY/APPLICANT

MALHA H. ABDULKADIRPROPOSED 3RD INTERESTED PARTY/APPLICANT

IRENE N. KANDIAPROPOSED 4TH INTERESTED PARTY/APPLICANT

FARID FARAJ AWADHPROPOSED 5TH INTERESTED PARTY/APPLICANT

ROSE WATHIHA NJOROGE.....PROPOSED 6TH INTERESTED PARTY/APPLICANT

PHILIP MURAGURI GICHUKIPROPOSED 7TH INTERESTED PARTY/APPLICANT

RULING

1. The proposed interested parties 1st – 8th, have by a Notice of Motion dated 4th March 2013 but filed in court on 1st October 2014 sought to be enjoined in the instant suit and sets out the following grounds in support of the application:-

(a) The proposed parties have a direct interest as purchasers over the property the subject matter of this suit.

(b) That any order granted in the suit directly affect the proposed interested parties interests over the suit property and its therefore imperative that they be enjoined so as to adequately protect and propagate their interties over the suit properties.

(c) The proposed interested parties stand greatly prejudiced if the orders sought are not granted.

(d) That no party stands to be prejudiced if the order sought are granted.

(e) The interest of justice dictates that the orders sought be granted.

2. The application is further supported on the supporting affidavit of Moses Njoroge the 1st proposed interested party sworn on 4th November 2013. In the supporting affidavit it is deponed that the proposed interested parties about the year 2010/2011 purchased plots from an entity known as KPA Langata Self Help Group (Langata KPA Nairobi West Trading Co. Ltd) within **LR No. 209/10635** and **LR No. 209/10636** as itemized under paragraph 3 of the supporting affidavit. The proposed interested parties each claim to have paid for their respective plots as particularized in paragraph 4 of the supporting affidavit and were subsequently given allotment and certificate of ownership by Langata KPA Nairobi West Self Help Group to await processing and issuance of titles.

3. The proposed interested parties aver they had occupied their respective plots and commenced developments thereon but were shocked when their plots were invaded in or about 10th January 2013 and their structures demolished by persons unknown to them. Upon following up with the officials of the Self Help Group the proposed interested parties state they came to learn that the Self Help Group had been sued in the present suit while in turn the Self Help Group had filed a Constitutional Reference in the High Court being Petition No. 143 “B” of 2012. The proposed interested partes contend that since the instant suit relates to the very suit they purchased, it is only fair they be enjoined in the suit as interested parties.

4. The 2nd defendant John Ochieng Ochola filed a replying affidavit sworn on 4th March 2015 in opposition to the proposed interested parties application. The 2nd defendant avers he and the 3rd and 4th defendants are officials of Langata KPA Nairobi West Self Help Group. He avers that in the year 2010, KPA Nairobi west Self Help Group decided to sell certain plots that had been subdivided from **LR No. 209/10635** and depones that the applicants were issued with Letters of Allotment of plots within LR No. 209/10635 as evidenced by annexure “MN3” in the supporting affidavit. The 2nd defendant averred that Langata KPA Nairobi West Self Help Group had no interest in **LR No. 209/10636** and could not therefore purport to allocate the applicant’s plots in land that they did not own. The deponent therefore asserts that the applicant’s claim, if any, ought to be in respect of **LR No. 209/10635** and not **LR No. 209/10636** to which Langata KPA Nairobi West Self Help Group had no interest and could not therefore allocate the applicants.

5. The plaintiff filed grounds of opposition dated 23rd March 2015 in opposition to the application by the 1st to 8th proposed interested parties. The grounds of opposition are as hereunder:-

1. The applicants have not demonstrate any and/or any sufficient interest in the present suit to warrant their joinder.

2. The applicants interest is in LR No. 209/10635 as demonstrated in their papers in the following respects:-

(a) Subdivision scheme annexed as MNI is in respect of LR No. 209/10635 and not 209/10636 which is the subject matter of this suit.

(b) Although it is alleged that Philip Muraguri Gichuki and Irene Kandia bought into LR 209/10636, evidence annexed as MN2 shows all the purported purchases were in respect of LR 209/10635 which is not the subject matter of this suit;

(c) Other than the allegations in paragraph 3 of the supporting affidavit in respect of Philip Muraguri Gichuki and Irene Kandia (which is not supported in evidence), the evidence by the applicants shows that they have no genuine interest in this suit.

3. Plaintiff believes that the proposed interested party applicants have no genuine interest in the suit and are busy bodies introduced into the suit to delay the fair trial of the same.

4. That in any event, even if the purported purchases were into LR No. 209/10636, the applicants remedy for fraud lies in a civil suit against the alleged vendors and they have no valid claim in this suit.

6. The applicants (proposed interested parties) and the plaintiff filed written submissions to canvass the application. The defendants did not file any submissions. The issue for determination is whether the applicants have shown or demonstrated they have an identifiable stake or legal interest or duty in the proceedings to warrant them to be enjoined as a party to the proceedings. See definition of **“interested party”** – **“The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013”**. Although over time it has become the practice of parties to apply to be joined as **“interested parties”** in pending and ongoing civil suits, my view is that under our Civil Procedure Rules there is no direct provision for a party to be joined as an interested party to a suit. The concept of interested parties being joined to proceedings is suited in Constitutional Petition matters and Judicial Review matters where the issues and matters involved may affect diverse persons and not necessarily those who may have approached the court.

7. Under Order 53 of the **Civil Procedure Rules** which deals with applications for Judicial Review once leave to bring a judicial review application has been granted, Rule 3 (2) requires that the Notice of Motion be served on all persons affected while Rule 6 gives any person who desires to be heard in opposition to the application the right to be heard. Order 53 rule 6 provides:-

“6. On the hearing of any such motion as aforesaid, any person who desires to be heard in opposition to the motion and appears to the High Court to be a proper person to be heard shall be heard, notwithstanding that he has not been served with the notice or summons and shall be liable to costs in the discretion of the court if the order should be made.”

8. Article 22 of the Constitution makes it clear that any person either acting for himself, in public interest or as a member of a group or association can institute court proceedings in matters relating to the Enforcement of the Bill of Rights under the Constitution. It is in this regard that the Chief Justice issued Rules of Practice and Procedure under Article 22 (3) namely – The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 where **“Interested party”** is defined. My view is that the definition was issued in the context of constitutional matters particularly in regard to matters relating to the protection of rights and Fundamental Freedoms.

9. Under the provisions of the **Civil Procedure Rules** pursuant to which the applicants have brought the present application namely Order 1 Rule 8, and 10 (2) the applicant has to seek to be enjoined as a

substantive party either as a plaintiff or a defendant. Order 1 Rule 8 relates to situations where there are numerous persons or who have the same interest. In such case anyone of the persons may sue or defend on behalf of all provided notice of the suit is given to all the other persons. Under Order 1 Rule 10 (2) the court may at any stage of the proceedings on the application of such person or in its own motion order the enjoinder of a party either as plaintiff or defendant on such terms as may be just if the involvement of such party in the proceedings is necessary to enable the court to effectually and completely adjudicate upon and settle all issues involved in the suit. Order 1 Rule 10 (2) provides:-

“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.”

Under Order 1 Rule 10 (2) above the person applying for enjoinder ought either to have been joined either as plaintiff or defendant or his presence before the court is deemed necessary in which case he is either added as a plaintiff or as defendant.

10. In the present case the applicants apply to be joined as interested parties. What is the role of an interested party in a proceeding and what would be the nature of pleadings he files? Unless the interested party is a plaintiff he cannot seek any reliefs and unless he is a defendant he cannot defend the plaintiff's claim. How then would an interested party participate in the proceedings? Parties must have clear roles in any court proceedings to avoid the matter getting convoluted and the issues mired. I have perused the pleadings in this matter and the plaintiff's claim is for declaration that they are the lawful proprietors of **LR No. 209/13415** in respect of which they hold a grant/title. The plaintiff further seeks the annulment of deed plan No. 347550 in respect of **LR No. 209/10636** and further declaration that the commissioner of lands is not entitled to process a grant of title for **LR No. 209/10636** in favour of the 1st, 2nd, 3rd and 4th defendants as they claim the parcel **LR No. 209/10636** forms part of **LR No. 209/13415**.

11. For their part the defendants claim they were lawful allottees of **LR No. 209/10636** and are entitled to have the title processed in their favour. By their counterclaim they seek orders of cancellation of title in respect of **LR No. 209/13415** and an order that they be issued with title in respect of **LR No. 209/10636**. The 2nd, 3rd and 4th defendant are the officials of the Self Help Group that the applicants claim allocated plots to them after purchase. The applicants could not lawfully acquire ownership of the plots they claim unless the Self Help Group was the owner of **LR No. 209/10635** or **LR No. 209/10636**. The Self Help Group has to establish ownership to the parcels of land before they can cede the same to the applicants. The suit as presented directly raises issues as between the plaintiff and the 1st – 4th defendants and the applicants would have no role to play in the determination of the suit.

12. The plaintiff has no contractual relationship with the applicants and I am not satisfied the claims by the applicants against the Self Help Group from whom they purchased their plots can be conveniently be tried in the instant suit.

13. I am not satisfied the applicants are a necessary party in the present proceedings to enable the court to effectually and completely adjudicate the matters in dispute. The inclusion of the applicants as parties in the suit would merely serve to proliferate the issues for determination. The issues that the applicants raise would merely relate to the defendants and are distinctive from the issues to be determined in the present suit.

14. The upshot is that I find the applicants application to be lacking in merit and I order the same dismissed with costs to the plaintiff and the 1st, 3rd and 4th defendants who opposed the same.

Ruling dated and signed at Kisii this 15th day of February 2016.

J. M MUTUNGI

JUDGE

Ruling delivered at Nairobi this 17th day of March 2016.

S. OKONG'O

JUDGE

In the presence of:

N/A for the plaintiff

N/A for the defendants

Mr. Kirui for Ms. Wachanga for the proposed interested parties

Kajuju Court Assistant

S. OKONG'O

JUDGE