



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC CASE NO. 82 OF 2017

EVERLYNE CHEPKEMBOI KITUR.....1ST PLAINTIFF

AMOS TIROP MATUL.....2ND PLAINTIFF

VERSUS

PETER KIRWA ARAP BIT.....1ST DEFENDANT

NATIONAL BANK OF KENYA LTD.....2ND DEFENDANT

AND

PATRICK ONKANGA MACHINI.....1ST APPLICANT

ESTHER AKAMBI MAJUMA.....2ND APPLICANT

LAWRENCE MUKENYA WEKESA.....3RD APPLICANT

RULING

This ruling is in respect of an application dated 2nd December 2019 seeking to have the applicants enjoined as interested parties in the suit herein. The application is based on the grounds that the applicants are purchasers for value of land parcel **NO. KING'ONG'O L.R 10492** and thus they have a beneficial interest in the suit property.

Counsel agreed to canvass the application vide written submissions which were duly filed.

APPLICANT'S CASE

The application is supported by affidavits wherein the applicants have annexed sale agreements they entered into with the defendants for purchase of various portions of the suit land. The 1st applicant purchased 0.25 Ha, the 2nd Applicant purchased 0.052Ha and the 3rd Applicant purchased 1/8 of an acre from the defendants.

Counsel for the applicants relied on Order 1 Rule 10(2) of the Civil Procedure Rules on joinder of parties and submitted that enjoining the Interested Parties in these proceedings is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all questions involved in the suit.

Counsel cited the case of **Trusted Society of Human Rights Alliance vs Mumo Matemu (2014) Eklr** and submitted that the applicants are purchasers for value and the 2nd defendants' grounds of opposition do not refute the sale agreements and the fact that they purchased them. That if the applicants are not enjoined, they will be condemned unheard and suffer irreparable loss.

Counsel further cited the case of **Benjamin Kipkulei Tai v Kenya Commercial Bank, Kisumu High Court – Civil Case No. 87 of 2003** on the principles to be considered in deciding whether or not to join a party.

RESPONDENT'S CASE

Counsel for the respondents filed a grounds of opposition on 7th February 2020 and submitted that the applicants have not met the threshold for joinder as set out in the Supreme Court case of **Trusted Society of Human Rights Alliance vs Mumo Matemu (2014) Eklr**. Further,

that the applicants had not demonstrated that they have an interest in the suit land either by production of a valid title deed to enable them be enjoined as interested parties.

Counsel also relied on the case of Judicial **Service Commission v The Speaker of the National Assembly & 2 others [2014] Eklr.**

*“[17] Suffice it to say that **an interested party has a ‘stake/interest’ directly in the case.....**, that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.*

It was counsel’s submission that ownership of a land is proved by production of a valid title deed and not a purported agreement of sale hence the court should not rely on the agreements annexed to the application.

Counsel also cited the case of **Francis Kariuki Muruatetu & Another v Republic & 5 others Petition 15 as consolidated with 16 of 2013 [2016] eKLR** to demonstrate elements applicable where a party seeks to be enjoined in proceedings as an interested party:

One must move the Court by way of a formal application. Enjoinder is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

(i) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

(ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

(iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.

Counsel therefore urged the court to dismiss the application with costs to the respondents as they have not met the threshold for enjoinder as interested parties.

ANALYSIS AND DETERMINATION

This is an application for joinder of interested parties to this suit. In such applications, the issue for determination is whether the applicant has met the threshold to be enjoined as an interested party.

An interested party is defined by **Rule 2** of the **“The Constitution of Kenya (Protection of rights and Fundamental Freedom) Practice and Procedure Rules 2013** as :-

“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”

In the Supreme Court case of **Trusted Society of Human Rights Alliance vs Mumo Matemu (2014) Eklr** the Supreme Court defined an interested party as follows;

‘Consequently, 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.

It follows that for a party to be enjoined as an interested party, then he or she must show that he has an identifiable stake or legal interest or duty in the proceedings. What stake or legal interest do the applicants have in this case? The applicants have annexed purchaser’s agreements of various portions of the suit land and state that the outcome of the case will affect their stake in the suit land. Whereas the sale agreements do not prove ownership, they do indicate that there were transactions over the suit land and therefore the applicants have a stake in these proceedings. The respondents will not suffer any prejudice if the applicants are enjoined.

Order 1 rule 10(2) of the Civil Procedure Rules provides;

(2) 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.

The above Order gives the court discretion either upon or without the application of either party to enjoin or strike out the name of a party improperly joined.

I have considered the application together with the submissions tendered and find that the application has merit and is therefore allowed as prayed. Applicants to file any response if any within 14 days.

DATED and DELIVERED at ELDORET this 9TH DAY OF JUNE, 2020

M. A. ODENY

JUDGE