

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ELC CASE NO. 81 OF 2013

KENYA RAILWAYS CO-OPERATION.....PLAINTIFF

-VERSUS-

KIZINGO APARTMENTS LIMITED & 2 OTHERS.....DEFENDANTS

RULING

1. In the notice of motion dated 18th December 2013, the Applicant seeks to be joined as a 2nd interested party. The motion is supported by the grounds on the face of it and the supporting affidavit deposed to by Mako Ali. The Applicant avers that she was a tenant of the plaintiff on a long term lease.

2. The Applicant contends in the grounds that the 1st and 2nd defendants together with ALCOP LTD illegally acquired the suit plot and subdivided it. The defendants then entered the Applicant's home and forcefully evicted her and her family and destroyed her property. That if the suit proceeds, the Court may grant orders that may be adverse to her and therefore it is in the interest of justice that she is enjoined as a party.

3. The application is not opposed by the plaintiff, 1st defendant and the interested party. However the application is strongly opposed by the 2nd defendant vide his grounds of opposition and lengthy submissions filed.

4. I have considered the pleadings and submissions filed. From the record, I was unable to find statement of defence for either of the defendants. I shall proceed on the basis that there is none on record. From the grounds on the face of the motion and the contents of the supporting affidavit, it is clear the Applicant's claim is directed against the 1st and 2nd defendants.

5. She has outlined the expenses she has incurred and valuation of the renovations she undertook on the suit property. The Applicant avers that the 1st and 2nd defendants together with ALSCOP LIMITED forcefully evicted her and demolished her properties. In seeking to be joined to these proceedings, she relies on the provisions of Order 1 Rule 10 (2) of the Civil Procedure Rules.

6. The 2nd defendant's submissions is inclined to giving evidence when it went into the arena of analysing documents annexed to the supporting affidavit yet they had not filed a replying affidavit to challenge the facts. But the 2nd defendant also raised certain important issues when he submitted that going by the claim in the plaint, the Applicant's participation as an interested party will be superfluous because she will not have room to lay her own pleadings setting out a cause of action for compensation.

7. The Civil Procedure Act and Rules describes parties to suits as Plaintiffs and Defendants. Order 1 rule 1 describes persons who may be joined as plaintiffs and in rule 3 describes who may be joined as defendants. In my view the term "interested party" in a suit is applicable where parties approach the before Court is by way of Judicial Review or Constitutional petition. In a suit such as this if a party is enjoined as an interested party then he/she will be more of spectator than a claimant.

8. In the instant application, the Applicant did not specify whether she wished to be joined as a Plaintiff or a Defendant. It is obvious she claims against the Defendants therefore she would be a proper party as a plaintiff. But she has not prayed to be joined as a plaintiff and having not prayed as much, this Court cannot impose it on her to be a plaintiff. In any event it is not clear if her interest would be secured based on the pleadings as filed .

9. I do admit the Applicant may have a viable claim but I am in doubt whether that claim can be determined if the applicant is joined as an interested party. The question the Court is left with is ; Can the Court determine two separate claims by two independent parties in one suit ? I think not. Consequently I find the manner the Applicant wishes to join the suit not appropriate and dismiss the motion with no order as to costs.

Ruling Dated and Delivered in Mombasa this 5th day of May 2016

A. OMOLLO

JUDGE