



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

CIVIL APPEAL NO. 19 OF 2014

(An appeal from the Judgment of the Resident Magistrate, Embu in PMCC No. 462 of 1994 dated 12/11/2008)

CRISPIN KIENYU KANGETHE.....APPELLANT

VERSUS

EPHANTUS NJIRU MBOGO.....RESPONDENT

AND

DORCAS NJOKI MUGO.....APPLICANT/INTERESTED PARTY

RULING

1. This the application dated 21/9/2015 seeking that the applicant/interested party be joined as a defendant in the case and that the court declares that the plaintiff is holding the title of the suit land Kagaari/Weru/1168 in trust for the applicant/interested party.
2. The applicant also seeks that the court orders the Land Registrar Embu to remove any restriction or caution registered against the suit land and that the respondent be compelled to transfer the suit land to the applicant/ interested party or in the alternative the court be pleased to extend time within which the interested party can apply to the land control board for extension of time for application of consent or in the alternative the court mandates the Deputy Registrar to sign all necessary documents to transfer the land to the applicant.
3. The application is supported by the affidavit of Dorcas Njoki Mugo. In the affidavit it is stated that the respondent offered to sell to her LR. Kagaari/Weru/1168. The applicant accepted the offer and paid full consideration and was granted the original title deed but upon inspecting the register, she discovered that the defendant/appellant had cautioned the land.
4. She also discovered that the appellant's children had also cautioned the title as purchasers. The suit is between the respondent as the vendor and the appellant as the alleged purchaser. The appellant counter claim was dismissed by court.
5. The appellant in the replying affidavit stated that he purchased 12.83 acres out of Kagaari/Weru/168 from the respondent and has been in possession since 1980. The respondent purchased the whole land while the appellant was still in occupation without bothering to find out why the appellant was in occupation. The appeal has not been heard and determined and the applicant should wait for the same. The appellant and his children cautioned the land to protect their interest as the respondent in the appeal had intentions of selling the land without considering that the appellant had bought a portion.

6. The respondent submitted that he is the registered owner of the suit land. He does not object to the interested party being joined as a party to the suit as the matter will be decided once and for all. The appellant was his friend and had requested to be allowed to cultivate Kagaari/Weru/1168 which the respondent agreed. The appellant then refused to vacate the land at the request of the respondent. The respondent never sold land to the appellant.

7. The respondent sold the land to the interested party and the same was paid for fully after which the interested party was given the title deed. The appellant has been evicted twice following a court order. The court ordered a caution that had been placed by the appellant to be removed.

8. The appellant in his submissions stated that he purchased 12.83 acres out of Kagaari/Weru/168 from the respondent in 1980 at Kshs.10,000/=. Upon payment of the purchase price the appellant was given vacant possession by the respondent and proceeded to develop the land and settle with his family. The respondent filed a suit against the appellant who filed a counterclaim that was dismissed. The appeal is against the dismissal of the counter claim. The applicant should wait for the appeal to be finalized before laying a claim on the land.

9. The applicant submitted that the appellant lost the case in the lower court. She states that she is the bonafide purchaser of the parcel of land and wants to be joined as an interested party so that she can fight for her rights as the respondent recognizes her as a purchaser. If the appeal is heard without the interested party's input she will be locked out and cannot appeal against the decision.

10. Order 1 Rule 10 (2) provides that

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.

11. In the case **DAVID KIPTUGEN VS COMMISSIONER OF LANDS NAIROBI & 4 OTHERS [2016] eKLR** the court of appeal allowed an applicant to be joined as an interest party at the appeal stage as disallowing the application would deny the applicant the opportunity to be heard on his claim to the ownership of the suit land. That would also be unconstitutional and against the rules of natural justice.

12. In the case of **DIG-TEC IMAGES LIMITED VS KENYA RAILWAYS STAFF RETIREMENTS & BENEFITS SCHEME & 4 OTHERS [2015] eKLR** the court held that;

the purpose of joining a party to a proceeding is to have a necessary party for the purpose of determining the real matters in question....It follows therefore that a party as long as his joinder shall assist in determination of the matter in question,can be joined at any stage of the proceeding.

13. The court further held that the applicants had established an interest in the appeal and proceeded to join them stating that the 1st respondent had not established that it stood to suffer any prejudice in the event the applicants were joined

14. The main issue for determination in this application is whether the applicant shall be joined as an interested party in this appeal.

15. In the case **DAVID KIPTUGEN VS COMMISSIONER OF LANDS NAIROBI & 4 OTHERS [2016] eKLR** the Court of Appeal allowed an applicant to be joined as an interest party at the appeal stage as disallowing the application would deny the applicant the opportunity to be heard on his claim to the ownership of the suit land. That would also be unconstitutional and against the rules of natural justice.

16. In the case of **DIG-TEC IMAGES LIMITED V KENYA RAILWAYS STAFF RETIREMENTS &**

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“The purpose of joining a party to a proceeding is to have a necessary party for the purpose of determining the real matters in question....It follows therefore that a party as long as his joinder shall assist in determination of the matter in question,can be joined at any stage of the proceeding”.

17. The court further held that the applicants had established an interest in the appeal and proceeded to join them stating that the 1st respondent had not established that it stood to suffer any prejudice in the event the applicants were joined.

18. In view of the above authorities and the applicable law, there is nothing outlawing this kind of joinder. The fact that applicant claims interested in the suit land in question, she ought to be joined as an interested party so that she can pursue her interest.

19. The purpose of joining a party to a proceeding under Order 1 Rule 10(2) is to have all parties claiming interest on board for the sole purpose of determining the real matters in question and to give any interested party an opportunity to defend his/her interest in the case. It would not be in the interest of justice to shut out a party even at appeal stage for justice may not be done at the end of the case.

20. So long as the joinder of a party shall assist the court in determining the matters in issue, it is fair and just for the court to consider granting joinder. The applicant has satisfied the court that she has substantial interest in the subject matter of this appeal being the disputed ownership of LR. Kagaari/Weru/168.

21. On the other hand the appellant has not demonstrated that he stands to suffer any prejudice should the prayers be granted.

22. I find the prayer for the joinder of the applicant merited and I allow it as prayed. Costs in the cause.

23. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 13TH DAY OF JULY, 2016.

F. MUCHEMI

JUDGE

In the presence of:-

P.N. Mugo for the Applicant

Appellant present