



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO.23 OF 2020

MOHAN GALOT.....PLAINTIFF/RESPONDENT

VERSUS

WALTER OMOSA NYAKUNDI.....1ST DEFENDANT/RESPONDENT

DANIEL KWEYA.....2ND DEFENDANT/RESPONDENT

JARED MORARA.....3RD DEFENDANT/RESPONDENT

RICHARD PONDO.....4TH DEFENDANT/RESPONDENT

HILLARY CHEPKWONY NGENO.....5TH DEFENDANT/RESPONDENT

VISTOR MBITHI.....6TH DEFENDANT/RESPONDENT

PETER ONG'ONGO ONDUMBU.....7TH DEFENDANT/RESPONDENT

TITUS SHITAMBASI ANDUKU.....8TH DEFENDANT/RESPONDENT

JOHN MUTUMA.....9TH DEFENDANT/RESPONDENT

BENJAMIN MUYA.....10TH DEFENDANT/RESPONDENT

MICHAEL MUTUNE.....11TH DEFENDANT/RESPONDENT

ELIJAH MWAURA WAWERU.....12TH DEFENDANT/RESPONDENT

BERNARD PETER.....13TH DEFENDANT/RESPONDENT

JANE KARAMBU MUGAMBI.....14TH DEFENDANT/RESPONDENT

RUTH JEPKORIR KANGONGO.....15TH DEFENDANT/RESPONDENT

BEATRICE ACHIENG.....16TH DEFENDANT/RESPONDENT

VINCENT WAFULA OPUSI.....17TH DEFENDANT/RESPONDENT

FRANCIS MUTHOKA MWANZIA.....18TH DEFENDANT//RESPONDENT

JOSHUA LOKITESO OKATETE.....19TH DEFENDANT/RESPONDENT

HOSEA IBRAHIM OBUFU.....20TH DEFENDANT/RESPONDENT

JAIRUS OMWOYO OTETE.....21ST DEFENDANT/RESPONDENT

JOSEAH KIPCHIRCHIR LANGAT.....22ND DEFENDANT/RESPONDENT

AND

PRAVIN GALOT.....1ST PROPOSED INTERESTED PARTY/APPLICANT

RAJESH GALOT.....2ND PROPOSED INTERESTED PARTY/APPLICANT

GANESHLAL GALOT.....3RD PROPOSED INTERESTED PARTY/APPLICANT

RULING

The matter for determination is the Notice of Motion Application dated 4th May 2020, by the Proposed Interested Parties seeking for orders that;

- 1. THAT this Honourable Court be pleased to enjoin the proposed interested parties herein Pravin Galot, Rajesh Galot and Ganeshlal Galot as Interested parties in these proceedings.**
- 2. THAT on being granted joinder the proposed interested parties be allowed to file their responses at the earliest given reasonable opportunity as the Court shall deem fit to facilitate expedition.**
- 3. THAT the costs of the Application be provided for.**

The Application is premised on the grounds that the Defendants are servants and employees of the Proposed Interested Parties and any Orders made against them would directly prejudice and adversely affect and injure the Proposed Interested Parties, in their peaceful occupation and enjoyment of their residences. Further that the proposed Interested parties as the employers of the Defendants, are every much aware that the Plaintiff/ Respondent is a vexatious litigant and in abuse of the Court process; has filed multiple suits making the same against the Defendants which have been stayed and are pending for hearing. Further that the Plaintiff's exclusive claim to ownership of the **Galot Estate Land L.R 7022/7**, is disputed and the dispute is pending in Court for hearing and determination in **HCC 2247/07**, and **HCC49/09**. That the Plaintiff has sued the proposed Interested Parties and the Proposed Interested Parties in the above suits and the proposed Interested Parties have reasonably strong defenses if allowed to defend.

The Application is supported by the Affidavit of **Rajesh Galot**, sworn on 4th May 2020. He averred that he is a Director and substantial shareholder of **Manchester Outfitters Limited**, a Company that is closely associated with the said Galot Estate. He further averred that he has been advised by his advocates that in law, the suit against the Defendants is predicated and motivated by mischief, malice and abuse of the Court.

He averred that they seek joinder in the suit herein because the Defendants are their employees as the Plaintiff/ Respondent has expressly confirmed and any adverse orders made against the Defendants will have a direct impact on them and will infringe upon their rights and the same would be tantamount to condemning them unheard. He further averred that the Plaintiff has sued the Defendants in **Kiambu CMCC 339 of 2009**, and on **High Court Civil Appeal No. 1/2009** the Court termed the Plaintiffs actions as mischievous. That the Plaintiff and the 3rd Proposed Interested Party are brothers and the 1st and 2nd proposed Interested parties are brothers and sons of the 3rd proposed Interested Parties and that the **Galot family** has jointly lived in the **Galot Estate** for ages. Further that the Plaintiff's/ Respondent's allegations about the Corona-19 Pandemic are not true.

He averred that the Plaintiff /Respondent sued the proposed Interested parties and he then applied for eviction of the Defendants in the same cases and that the suits have been stayed and **status quo** imposed. Therefore, it will be highly prejudicial to the Proposed Interested Parties to proceed with the Plaintiff's suit in their absence.

The Application is opposed and the Plaintiff/ Respondent filed Replying Affidavit sworn on 15th June 2020, and averred that he is the exclusive registered owner of the suit property wherein he resides with his family having been registered as the owner on 30th June 1970. It was his contention that **Manchester Outfitters Limited** was incorporated on 30th November 1977, and the suit property acquisition cannot be associated with it. He further averred that he invited the proposed 3rd Interested Party as his guests, whom he has allowed to stay in several Maisonettes that he built within his property and he did not intend to donate to them his proprietary rights. He also averred that he engaged the Proposed Interested Parties as his salaried employees in Manchester Outfitters Limited and tasked them with supervising workers at the suit property. However, they unlawfully took control of his employees and converted them to a parallel outfit to take care of their own personal interests and have time to time employed others thereby developing a different line of command of workers within his property.

He alleged that he is the Chairman of the Board of Directors of **Manchester Outfitters Limited**, and the Proposed Interested Parties are not Directors and or even shareholders of the said Company. That the Proposed Interested Parties have been peddling fake documents to the effect that they are Directors and shareholders, but the matter of whether they are Directors is awaiting determination.

He further alleged that the Counsel on record for the Interested Parties illegally influenced change of records for the benefit of the Proposed Interested Parties and is therefore interested in the outcome. It was his contention that without proof of ownership and proprietary rights, the

fact that the Defendants are employees of the Proposed Interested Parties who merely occupy the suit property as his guests, does not proffer them any right to bring third parties or other people to illegally occupy his property without his authority.

He contended that the Proposed Interested Parties should make their alternative and private arrangements for accommodation for the Defendants who are their employees as the Defendants are illegally residing within his property while they have alternative accommodation. That the mere fact that the Proposed Interested Parties are his relatives is not a ground for them to forcefully seek to have their own employees or them living in his property without his authority. He averred that he has been advised by his advocates on record that a decision of a Judge of equivalent jurisdiction is merely persuasive and not binding on another Judge of concurrent jurisdiction. He further averred that the **Hon. Mr. Justice Muchelule** in his interlocutory decision sought to rely on mere allegations that he holds his property in trust without any trust document and that the said decision is not sound and cannot be relied on. He further averred that the Order annexed have nothing to do with the disputes pitting him against the Defendants, orders which have since lapsed. He also contended that the suit regarding the illegal occupation of his property by third parties who are not parties in **HCCC No. 2247 of 2007**, is not directly and or substantially in issue or at all with the present proceedings.

The Court has now carefully read and considered the instant Application, the affidavits and the annexures thereto and the rival written submissions filed the parties herein and renders itself as follows:-

It is not in doubt that the Plaintiff has sued the Defendants herein and in his Complaint he has sought for various orders against the Defendants; Amongst them, an order requiring the Defendants to deliver **Vacant Possession** over the suit property, seeking for mesne profits against the Defendants for the period they have allegedly been unlawfully on the suit property. From the affidavits of the parties, it is not in doubt that the Defendants are employees of the proposed Interested Parties / Applicants. The proposed Interested parties have alleged that the Defendants being their servants are entitled to occupation of the suit property. Further, the Proposed Interested Parties have also alleged that there is a Court Order barring the Plaintiff/Respondent from seeking eviction of the Proposed Interested Parties and/or their servants from the suit property.

A glance look at the Complaint and the issues raised in the affidavits, there is no in doubt that one of the issue that the Court may be required to determine will be whether the Defendants are in the suit property unlawfully. As already stated above, it is not in doubt that the Defendants are employees of the Proposed Interested Parties, the question of whether or not the Proposed Interested Parties are lawfully on the suit property cannot be determined at this stage. However, it is not in doubt that for the Court to effectually determine whether or not the Defendants are lawfully or unlawfully on the suit property, it will have to determine the capacity of the Proposed Interested Parties to be on the suit property.

Order 1 Rule 10 (2) of the Civil Procedure Rules 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.”

The Applicants have averred that any order made against them would directly prejudice and adversely affect and injure their peaceful occupation and enjoyment of their residences. The fact that the Defendants are employees of the Applicants and their occupation of the suit property is subject to the occupation by the Applicants herein. Therefore, there is no doubt that the presence of the applicants in the suit property is necessary to enable the Court determine all the question involved in the dispute. See the case of **Edgar Kipsase Choge & 4 others ...Vs...China Overseas Engineering Group Co. Ltd & 6 others [2017] eKLR** where the Court held that ;

“It is clear from the above provision that the court can, upon satisfying itself that the person whose presence before the court may be necessary in order to enable or assist it effectually and completely determine all questions involved in a dispute, add such person as a party. The rules do not define who this person whose presence before the court is necessary is.”

Further the Court is persuaded by the findings in the case of **Moses Wachira ...Vs... Niels Bruel & 2 Others [2015] eKLR** wherein the Court quoted the Supreme Court decision in **Communications Commission Of Kenya And 4 Others ...Vs... Royal Media Services Limited & 7 Others Petition No. 15 OF [2014]eKLR** where the Court pronounced itself on who an Interested Party is and held as follows:

*“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court’s decision in the **Mumo Matemo** case where the court (at paragraphs 14 and 18) held:*

*“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. Similarly in the case of **Meme v. Republic, [2004] 1 EA 124**, the High Court observed that a party could be enjoined in a matter for the reasons that:*

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;*
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;*
- (iii) Joinder to prevent a likely course of proliferated litigation.*

We ask ourselves the following questions:

a) what is the intended party's state and relevance in the proceedings and

b) will the intended interested party suffer any prejudice if denied joinder.?"

It is evident that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court.

Further, it is evident that such joinder or amendment should be freely allowed if such amendment or joinder do not result in prejudice or injustice to the other party. See the case of Central Kenya Ltd...Vs...Trust Bank & 4 Others C.A No.222 of 1998, where the Court held that:-

“All amendment should be freely allowed at any stage of the proceedings provided that the amendment or joinder as the case may be will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs”.

In this instant case, the court has already held that the Applicants are necessary parties as being the Defendants employers, their occupation and interest over the suit land may assist the Court in determining the Defendants occupation and liability over the suit property. Consequently, the Court holds and finds that the Applicants are a necessary parties and their Application to be enjoined as Interested Party is **merited**.

Having now carefully read and considered the instant Application, the affidavits and annexures thereto, the written submissions and filed authorities the Court finds that the Notice of Motion Application dated **4th May 2020**, is merited and the same is allowed in terms of prayers **No.1 & 2** with costs being in the cause.

It is so ordered.

Dated, signed and Delivered at Thika this 2nd day of July 2020.

L. GACHERU

JUDGE

2/7/2020

Court Assistant - Lucy

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Ruling** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

With consents and virtual appearance of:-

Mr. Tiego for the Plaintiff/Respondent

Mr. Kenyatta for the Defendants/Respondents

Mr. Kaka Kamau for Interested parties/Applicants

L. GACHERU

JUDGE

2/7/2020