



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 268 OF 2013

HUTHEIFA HAJI AHMED

ISA HAJI AHMED

ABUBAKAR HAJI AHMED

HALIMA MOHAMED KASSIM (Suing as the administrator of the estate of

HAJI SHEIKH

ALI).....PLAINTIFFS

VERSUS

**NONDAHONA COMPANY LIMITED & 155 OTHERS.....1ST
DEFENDANT**

**EGESWA COMPANY LIMITED.....2ND
DEFENDANT**

**JOHN OMUNDI OGANGO.....INTENDED INTERESTED
PARTY**

AND

**JOSEPH NDUNGU MAINA & 49 OTHERS...INTENDED 2ND INTERESTED
PARTIES/APPLICANTS**

RULING

(Application to be enjoined as interested parties; applicants being members of a company which is already one of the defendant in the suit; most of the applicants if not all, already defendants in the matter; claim of the interested parties taken care of by presence of the company; application dismissed)

1. The application before me is that dated 25 May 2015 filed by certain persons who wish to be enjoined to these proceedings as interested parties. The said persons are members of the 1st defendant company. A little background will shed light on the reasons why this application has been filed.

2. This suit was commenced by way of plaint filed on 28 March 2013. The plaintiffs are the

administrators of the Estate of Haji Ahmed Sheikh Ali (deceased) and the suit property, which is L.R No. 65772/2, forms part of the estate of the deceased. It is land measuring about 400 acres. In the year 2002, one of the beneficiaries of the estate by name Abdi Aziz Ahmed, entered into an agreement to sell the suit property to the 1st defendant company. Apparently, the sale was irregular which led to the 1st defendant (Nondahona) suing Abdi Aziz and orders were issued that Abdi Aziz, does refund the money paid by Nondahona. In the year 2012, the plaintiffs offered to Nondahona and the 2nd defendant company (Egeswa) 200 acres each at a cost of Kshs. 300,000/= per acre, hence a total of Kshs. 120 Million. It is pleaded that the defendants were to complete payment by 31 March 2012, but they did not, and by mutual agreement, the completion date was extended to 28th February 2013. Payments were however not forthcoming thus rendering the sale invalid. However, the members of the two defendant companies entered the land and started cultivating. In this suit, the plaintiffs want the defendants, and their agents permanently restrained from the land. The plaint was later amended to add several persons as defendants, who I presume to be members of Nondahona Ltd. Nondahona Ltd filed defence in which it denied the existence of a sale agreement between itself and the plaintiffs.

3. In this application, 50 persons who state that they are members of Nondahona Ltd want to be enjoined as interested parties. The grounds for the application is that they have entered into an agreement with the plaintiff to purchase the suit property and that the plaintiffs have received money but have not allowed them to occupy the land. In the supporting affidavit, sworn by Joseph Ndungu Maina, who has stated that he is swearing the affidavit on behalf of himself and the 49 others, it is deposed inter alia, that he and the 49 other persons bought the suit property from Abdi Aziz, which sale did not go through, and it was ordered that Aziz refunds their money. It is deposed that in a meeting held on 26 April 2010, the plaintiff agreed to sell the land to members of Nondahona Ltd and it was agreed that they would purchase the land by paying an additional Kshs. 60,000/= per acre. It is deposed that they paid the monies individually and each purchased different acreages and that they were given upto 31 January 2013 to complete payments. It is averred that other members of Nondahona Ltd did not pay the additional purchase price. It is deposed that for those who had cleared payment, they were to be shown their plots but despite this, the plaintiff has not shown them their plots. They want to be enjoined to this suit so as to pursue their land.

4. The plaintiff has not opposed the application but that does not mean that I must automatically allow it. There is no clear cut provision on the addition of an interested party in our civil procedure rules, but courts ordinarily utilize the provisions of Order 1 Rule 10 to enjoin parties to the suit if they are interested in the subject matter. The provisions of Order 10 Rule 1 provide as follows :-

Substitution and addition of parties [Order 1, rule 10.]

(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.

(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.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.

(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

5. It will be seen that Order 1 Rule 10 (2) gives the court some avenue to enjoin a party to the suit *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.* The question that I need to address myself to is whether the interested parties have demonstrated that they are necessary parties to this litigation.

6. Before I go far, I do note that many if not most, or probably all, of the persons who wish to be enjoined as interested parties are already defendants in the suit pursuant to the amended plaint. I have tried to go through the list of the one hundred plus names and I note that among those names are the names of the persons who are applying to be interested parties. If they are already defendants, then they do not need to apply to be enjoined as interested parties.

7. But even if they were not named as defendants, I do not see how they qualify to be necessary parties in these proceedings. They have not shown me any sale agreement between themselves and the plaintiffs. I cannot therefore take their word that they purchased the suit property from the plaintiffs. If they purchased through the 1st defendant company, as it seems to me to be the case, then their interests, are well covered by the presence of the 1st defendant company in the suit. Alternatively, if they have a claim which is separate from that between the plaintiffs and the defendants in the suit, then they can file a suit of their own for consideration.

8. For the above reasons, I am not convinced that I should allow the application and I therefore dismiss it with costs.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 8th day of October 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU

In presence of :-

Mr Mwathe holding brief for Mr. Kamau for applicant

Mr L. M. Karanja present for 1st defendant

Mr Ogeto present for 2nd defendant and 1st interested party

N/A on part of M/s Hari Gakinya & Co for plaintiff

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

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