



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC PET NO.42 OF 2019

FREEDOM LIMITED.....PETITIONER

VERSUS

1. DIRECTOR OF SURVEY.....1st RESPONDENT

2. DIRECTOR OF CRIMINAL

INVESTIGATIONS LAND FRAUD.....2nd RESPONDENT

3. CHIEF REGISTRAR.....3rd RESPONDENT

OMAR AWDH MBARAK...INTENDED INTERESTED PARTY/APPLICANT

RULING

1. The application for determination is the Notice of Motion dated 29th January, 2020 in which the Intended Interested Party/Applicant seeks to be enjoined in these proceedings as an interested party in this suit. The application for joined is brought under Order 1 Rule 10 (2) and Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act.

2. The Application is supported by the affidavit of Omar Awadh Mbarak, the Applicant sworn on 29th January 2020. The applicant states that, just like the Petitioner, he is claiming ownership of all that piece of land known as Plot No.287 of Section V being CR Number 6302. The applicant avers that he is the legal rightful heir of his late grandfather Mbarak Awadh Salim who purchased the suit property on 22nd August, 1978 from the then registered owner, Mohamed Afzal Khan. He has annexed a copy of the order of court together with a copy of the title deed and transfer. The applicant has deposed that there is a pending suit being **Mombasa ELC No.358 of 2016 –Freedom Limited –v- Omar Awadh Mbarak** wherein the Petitioner is seeking to discredit the applicant's entitlement to the suit property. The applicant states that he was caught by surprise upon learning that the petitioner had sought to be supplied with duly signed and sealed Deed Plans to the suit property yet the applicant is the holder of the original Deed Plans to the suit property. The applicant states that he wishes to be granted an opportunity to take part in the hearing of the petition herein for the court to consider the documents presented by the Applicant for the court to put the matter to rest with finality and to avoid filing multiplicity of suits.

3. The petitioner has filed grounds of opposition dated 20th February 2020 claiming that the application is frivolous, scandalous and otherwise an abuse of the court's process. The petitioner states that the application is an afterthought engineered to obfuscate matters before this court, anchored in material non-disclosure of facts, and not backed by evidence. It is the Petitioner's contention that the Applicant has perjured himself on the affidavit sworn on 29th January, 2020 hence not deserving of the orders of joinder. The petitioner further states that the realm of grant of the orders sought are ungrantable in the present scenario as the Applicant has no locus over all that parcel of land known as MN/V/1948 (Cr. No.32564) the subject property in this suit. It is the petitioner's contention that the application is a back-door attempt to sanitize the illegality perpetrated by the applicant in that the annexures attached were fraudulently procured and are subject to an ongoing criminal case.

4. Directions were given by the court that the application be canvassed by way of written submissions. Only counsel for the applicant filed submission on 27th February, 2020. The applicant's counsel submitted that the application has merit and should be allowed because the applicant has shown that he has a legal interest in the suit property as demonstrated by the title deed annexed. Counsel submitted that the applicant is a necessary party to this petition for reason that the outcome of the petition will directly affect him since he has proprietary interest over the suit property.

5. I have considered application and the submissions made. The application seeks to join the applicant as interested party in this petition.

Order 1 Rule 10 (2) of the Civil Procedure Rules provides as follows:

“10 (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 effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

6. It is clear that under Order 1 Rule 10 (2) of the Civil Procedure Rules, the court has discretion to order the name of a person who ought to be enjoined whether as plaintiff or defendant, or whose presence before the court may be necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the said suit.

7. In this case, the applicant has demonstrated that he has an interest in the suit property. There is also no denial that there is another case pending being **Mombasa ELC Case No.358 of 2016** between the applicant herein and the petitioner involving the same subject matter. This being a land matter and the applicant having demonstrated his interest in the suit property, I feel the application is meritorious.

8. The upshot is that this application is allowed. In conclusion, I order that:

- a. **The applicant, Omar Awadh Mbarak be and is hereby enjoined in these proceedings as an interested party.**
- b. **The petitioner to serve the interested party with the petition within fourteen (14) days from the date of this ruling.**
- c. **The interested party to file and serve his response to the petition within fourteen (14) days of service of the petition.**
- d. **The petitioner to file a supplementary affidavit, if any in respect to the interested party’s response, thereafter the matter will proceed for pre-trial directions.**
- e. **The costs of the application will be in the cause.**

9. Orders accordingly.

DATED, SIGNED and DELIVERED at MOMBASA electronically by email due to COVID-19 Pandemic this 22nd day of September 2020

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Yumna Court Assistant

C.K. YANO

JUDGE