



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENTAL AND LAND COURT AT NAIROBI**

**ELC CIVIL SUIT NO. 131 OF 2007**

**WILSON WAITHAKA GITAU.....PLAINTIFF**

**VERSUS**

**KENYA WINSTON COMPANY LIMITED..... DEFENDANT**

**RULING**

**The Application**

The application before this Court for determination is the Chamber Summons dated 23<sup>rd</sup> January 2014 brought by the Applicant, Joseph Kimata Wachira, who is seeking to be enjoined in this suit as an Interested Party. His main ground for the application is that he is the purchaser for value of LR. No 7418/30 situated North East of Ruiru Town, the suit property herein, having bought the same from the Defendant pursuant to a sale agreement dated 26<sup>th</sup> May 2007. Further, that, and it is only fair and in the interests of justice that he be enjoined in this suit.

The Applicant in his supporting affidavit sworn on 23<sup>rd</sup> January 2014 stated that it was an express term of the said agreement that he would be allowed to develop the suit property after payment of the deposit of Kshs 600,000/=, and that he took possession thereof and embarked on a subdivision of the property which he advertised for sale. However, that the Plaintiff thereupon prevented him from entering the property. The Applicant also stated that there is a similar suit pending in this Court namely **ELC 449 of 2009** involving the parties herein, whose proceedings were stayed pending the hearing and determination of the suit herein and of **ELC 297 of 2009** which has since been dismissed.

The Applicant attached copies of the said sale agreement, the title to the suit property and of the subdivision plan of the said property. The Applicant's counsel also filed written submissions dated 2<sup>nd</sup> July 2014 in which he reiterated the foregoing facts.

**The Plaintiff's Response**

The Plaintiff objected to the Applicant's Notice of Motion in a replying affidavit sworn on 6th May 2014. His position is that the Applicant has never been in possession of the suit property, neither does he have any rights over the suit property and should sue the Defendant instead to recover his money. Further, that the subject application is meant to delay the trial of this suit, taking into account that directions have already been taken and there is an interlocutory judgment against the Defendant.

The Plaintiff's counsel filed written submissions dated 22<sup>nd</sup> July 2014, wherein he reiterated the

foregoing arguments, and submitted that the Applicant has been aware of this suit, and has not explained why he has brought this application after inordinate delay.

### **Issues and Determination**

I have carefully read and considered the pleadings and arguments made by the parties herein. The issue for determination is whether the Applicant should be joined as an interested party to this suit. Order 1 Rule 10 of the Civil Procedure Rules gives this court discretion at any stage of court proceedings to add parties 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.

Order 1 Rule 10(2) provides as follows:

**“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.”**

I find in this regard that to the extent that the Applicant alleges to have purchased the suit property herein from the Defendant, he is a necessary party in this suit for the court to be able to assess and determine all the issues in dispute relating to the suit property. He has in this regard brought evidence of a sale agreement and of a caveat he has registered against the suit property to protect his interests as a purchaser. I am also guided by the decision in **Werrot and Company Ltd and others v Andrew Douglas Gregory and others, Nairobi (Milimani) High Court Civil Case No. 2363 of 1998 (1998) LLR 2848 (CCK)** where Ringera J. (as he then was) held as follows:

**“For determining the question whom is a necessary party there are two tests: (i) There must be a right to some relief against such party in respect of the matter involved in the proceeding in question and (ii) it should not be possible to pass an effective decree in the absence of such a party.”**

In addition, I note from the Court record that there is a pending Notice of Motion dated 25<sup>th</sup> June 2013 and filed on 26<sup>th</sup> June 2013 seeking to set aside the interlocutory judgment entered against the Defendant herein, and for leave to file a Defence. It is thus the position that the suit herein is not ready for full hearing, given the pending application. The Plaintiff will therefore not be prejudiced by the joinder of the Applicant as an Interested Party.

The Chamber Summons dated 23<sup>rd</sup> January 2014 is accordingly allowed, and Joseph Kimata Wachira, is joined as an Interested Party to this suit. The said Interested Party shall bear the costs of the said Chamber Summons.

Orders accordingly.

Dated, signed and delivered in open court at Nairobi this \_\_\_\_7<sup>th</sup>\_\_\_\_ day of \_\_\_\_October\_\_\_\_, 2014.

**P. NYAMWEYA**

**JUDGE**