

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 144 OF 2014

THERESA MUKAMI NJUGUNA ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. DORIS MUSALIKU MONARI)

2. ANGELA MORAA MONARI)::::::::::::::::::::::::::::::::::::: DEFENDANTS

3. ZEDEKIAH EVANS NYAMOGO ACHIRA)

R U L I N G

1. The applicant Zedekiah Evans Nyamongo brought a notice of motion dated 29/9/2014 in which he seeks to be enjoined to this suit as a defendant and at the same time seeking to set aside this court's orders of 22/9/2014. The applicant contends that he bought a half an acre out of LR Kitale Municipality Block 18/Bidii/211. He further contends that he has commenced the process of obtaining title to his portion. That sub-division has been carried out and that he is only awaiting processing of title for one of the sub-divisions being LR No. Kitale Municipality Block 18/Bidii.147. The applicant contends that he bought the suit land from the defendants after he was informed that the plaintiff was unable to clear the balance of the purchase price and that the vendors had written a banker's cheque for refund of the purchase price which the plaintiff declined to accept.
2. The applicant contends that he would have obtained his title were it not for the caution registered against the title at the instance of the plaintiff.
3. The application is opposed by the plaintiff/Respondent based on her replying affidavit sworn on 9/10/2014. The respondent contends that she has no claim against the applicant and therefore he should not be allowed into the suit as a defendant. The respondent contends that she bought half an acre from the defendants on 27/5/2011 and took possession immediately. She further contends that she has never discussed the issue of refund of the purchase price at any given time and that the applicant's claims that he is in possession of the suit property are not true. The respondent further contends that the proposed sub-divisions have not been approved and that the injunction orders granted in this case should remain in force until hearing and determination of this suit.
4. I have carefully considered the application herein as well as the opposition to the same by the respondent. I must now decide on whether the applicant should be enjoined to this suit as a defendant. Under the provisions of order 1 Rule 10 (2) of the Civil Procedure Rules, the court on its own motion or on application of either party can order that a party be joined either as plaintiff or defendant. The court has to be satisfied that the presence of the party to be added is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.
5. In the present case, the plaintiff brought a suit against the defendants seeking an order of specific performance of the agreement of 27/5/2011. The defendants have filed a defence and counter-claim in which they contend that they sold the land to the applicant after the plaintiff breached the condition of the agreement. The defendants also contend that the agreement of 27/5/2011 is null and void for want of consent of Land Control Board. The applicant contends that he bought the land after the defendants assured him that the previous buyer (respondent) had failed to meet

the conditions of the agreement. This being the case, I find that the applicant is a necessary party whose presence in this suit will enable the court to effectually and completely adjudicate and settle all question involved in the suit. The mere fact that the plaintiff has opposed the application is not a reason for the court to decline to grant it. The court has to consider whether the presence of the party seeking to be joined to the suit is necessary and as I have said, the presence of the applicant is necessary to enable the court to deal with all the issues arising in this suit. In the three cases cited by the plaintiff's counsel, the Judges in those cases considered the issues in the cases and found that it was not necessary to add the applicants as defendants because in some cases, those seeking to be enjoined could be called as witnesses and in other cases, it was appropriate to enjoin them as interested parties. The applicant herein cannot be called as a witness. He cannot be allowed into the case as an interested party. He can properly be brought into this suit as a defendant so that all questions may be addressed effectually and completely. I therefore allow the applicant's application to the extent that he is hereby ordered to be added to this suit as the third defendant. The plaint shall be amended to include him. Summons shall be prepared and served on the third defendant only. The said amendment to be done and service to be effected within 14 days from today.

Costs in the cause.

It is so ordered.

Dated, signed and delivered at Kitale on this 3rd day of December, 2014.

E. OBAGA

JUDGE

In the presence of Mr Waweru for respondent and Mr Barongo for applicant. Court Clerk Lobolia.

E. OBAGA

JUDGE

3/12/2014