

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

HCC NO. 24 OF 2012

JACKSON MWANIKI NDUNGU PLAINTIFF

VERSUS

PETER ANDEYO VUHYA..... DEFENDANT

RULING

By an application dated 30th May 2012 the interested party sought to be enjoined as a party in the present suit. The applicant contends he was the registered owner of title **No. E. Bukusu/S. Kanduyi/8830** which he subdivided and sold the numbered portions to the defendant herein. This makes him have an interest in the outcome of this suit. Further there is an appeal vide Bungoma HCCA No. 43 of 2006 still pending between the applicant and the plaintiff.

The application is opposed by the plaintiff who filed a replying affidavit on 25th July 2012. He avers the applicant has no business to be enjoined into the proceedings as there are no issues to be determined between the plaintiff and the applicant. The plaintiff/Respondent submits further that the applicant is only keen to delay this suit by the filing of the present application. According to him, the L.R. **No. E. Bukusu/S. Kanduyi/8830** is intact and no sub-division has been done on the ground.

I have perused the documents filed to follow up the history of the matter. There is no doubt there's an appeal pending in HCC 113 of 2006 regarding **E. Bukusu/S. Kanduyi/8830**. In it, from the memorandum of appeal there is an issue of boundary dispute. The defendant bought L.R's **E. Bukusu/S. Kanduyi/14796,14677 and 14676** which was curved out of **E. Bukusu/S. Kanduyi/8830**. This is shown in the mutations marked **PV1** in the affidavit of PETER ANJEYO VUHIAH sworn on 22nd March 2012.

The plaintiff/respondent already obtained orders of temporary injunction that stopped the defendant from carrying any development on this land parcels on the basis they are his. The applicant, therefore is right when he says the outcome of this suit will affect him. It is him who sold the defendant herein the parcels for which he has been sued. The earlier suits between him and the plaintiff regarding the dispute is also still pending. Under Order 1 Rule 3 provides;

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act.... where if separate suits were brought against such persons any common question of law or fact would arise.”

Rule 5 ***“It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.”***

It therefore follows that the interested party need not be interested to all reliefs claimed in the suit. I find that being the owner of the original suit parcel title **No. E. Bukusu/S.Kanduyi/8830** for which reason the present defendant has been sued, he is thus entitled to participate. The defendant may have chosen to call him as a witness but since he has moved the court to be a party, this court finds no reason why he should be denied the request.

The plaintiff/respondent submits the application is intended to delay the trial of this suit. In their submissions, they did not explain how the delay will be occasioned. In any event timelines once set for the interested party to file their pleadings, the suit can always be listed for hearing. In the result, the

application is allowed, the interested party is joined as 2nd defendant in this suit. He is directed to file and serve his statement of defence, documents and witness statements within 30 days from the date hereof. Costs in the application be cause.

RULING DATED this **8th** day of **October** 2013

A. OMOLLO

JUDGE.