



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 483 OF 2008

SAMUEL MAINA GICHOHIPLAINTIFF/APPLICANT

CITY COUNCIL OF NAIROBI.....DEFENDANT/APPLICANT

RULING:

The applicant herein **Cecilia Ngendo Mwangi** has brought this Notice of Motion dated 21st July 2011, brought under Section 3A of the Civil Procedure Act, Order 1 Rule (2) and Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of Law for orders that:-

(i)The said **Cecilia Ngendo Mwangi** the interested party herein be allowed to join these proceedings.

(ii)That the costs of this application be provided for.

The application was based on the following grounds and the annexed affidavit of **Cecilia Ngendo Mwangi**.The grounds:

(i) The applicant is the registered owner of the suit property having been allocated the same on 21st may, 1996 earlier that the Plaintiff.

(ii)The applicant has great interest in this property and has paid all dues to the Respondent/Defendant and therefore it is only fair that she be enjoined in as a party as any decision is likely to affect her.

The application is opposed by the plaintiff herein. The parties filed written submissions which i have carefully considered. The application is premised under Order 1 rule 10 (2) which states that:-

“ the court may at any stage of the proceedings either upon or without the application of either party and or 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 whom 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 to effectually and completely to adjudicate upon and settle all questions involved in the suit be added”.

The applicant herein alleges that she is the registered owner of the suit property. The Plaintiff on the other hand alleges that he is the rightful owner of the suit property.

The Court finds that it is necessary to join the applicant herein as an interested party in the suit in order to enable the court effectually and completely adjudicate upon and settle the issue herein.

Though the Plaintiff has opposed the application and stated that the issues raised by the applicant cannot

be dealt with in the instant suit, the Court finds that both the Plaintiff and Interested party are laying a claim over the same parcel of land.

Section 3A of the Civil Procedure Act gives the court the inherent power to make such orders as may be necessary for the ends of justice and to prevent abuse of the process of the Court.

The court finds that this is one such case where the court is called upon to exercise its inherent power. I will not hesitate to do so and proceed to allow the applicant's application dated 21st July, 2011.

Consequently the court allows the interested party Notice of Motion dated 21st July, 2011 entirely.

Costs in the cause.

Dated and delivered this **8th day of October, 2013.**

L.N. GACHERU

JUDGE

In the Presence of:-

..... For the Plaintiffs

.....For the Defendants

Zipporah: Court Clerk

L.N. GACHERU

JUDGE