



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 61 OF 2013

NAIROBI BUSINESS PARK LIMITED.....

....1ST PLAINTIFF

ACTIS NBPL HOUSING (MAURITIUS) LIMITED.....

2ND PLAINTIFF

VERSUS

KENYA FORESTRY SERVICE.....

.....DEFENDANT

ENVIRONMENT INTERACTION ORGANIZATION.....INTENDED

INTERESTED PARTY

RULING

Coming before me for determination is the Intended Interested Party/Applicant's Notice of Motion dated 2nd May 2013 which seeks for the Applicant to be enjoined in this suit as an Interested Party. It is brought under Order 1 Rule 10 and Order 51 of the Civil Procedure Rules as well as Sections 3 and 3A of the Civil Procedure Act.

It is based on the grounds set out on its face together with the Supporting Affidavit of Professor Karanja Njoroge sworn on 2nd May 2013 in which he stated that he is the Chairperson of the Environmental Interaction Organization which is registered in Kenya as a Non-governmental Organization whose primary objective is to advocate for environmentally friendly use of natural resources for posterity, protection and conservation of forests and water catchment areas. He further stated that the Applicant is authorized to take part in the proceedings herein as they involve Ngong Forest, which is a natural resource that the Applicant by virtue of its main objectives and the people of Kenya have an interest in. He further stated that the Applicant is aware that vide proclamation No. 44 of 1932, Ngong Forest was gazetted as a forest and the boundaries thereto alienated. He further averred that the Applicant has been involved in matters related to the Ngong Forest and wishes to be granted an opportunity to present its views on the matter in Court as a public interest body.

The Application is contested. The Plaintiffs filed the Replying Affidavit of Martin Koome Gikunda sworn on 26th June 2013 in which he stated that this is a private action by the Plaintiffs against the Defendant in trespass and that in such a suit, there is no such party as an interested party as parties can only be joined in a civil action as Plaintiff or Defendant. He further stated that the Applicant does not qualify to be joined in these proceedings as a Plaintiff in terms of Order 1 Rule 1 nor does it qualify to be joined in these proceedings as a Defendant in terms of Order 1 Rule 3 of the Civil Procedure Rules, 2010. He further swore that the Applicant has wholly failed to show that it ought to be enjoined either as Plaintiff or

Defendant or that its presence is necessary to enable the court effectually and completely adjudicate upon and settle all the questions involved in this suit.

In response thereto, the Applicant filed the Further Affidavit of Professor Karanja Njoroge sworn on 10th July 2013 in which he stated that the Applicant has demonstrated that it is an NGO that deals with conservation of natural resources, forest and water reserves and that Ngong Forest is a major water conservation zone for the Nairobi County and its environs. He further stated that Articles 60, 62, 63, 69 and 70 of the Constitution gives any person a right to apply to Court for redress where there is a threat of violation, denial, infringement or threat of the right to a clean and healthy environment as per Article 42 of the Constitution. He further stated that this suit involves such rights relating to the environment and conservation of forest and water catchment areas and it is in the interest of justice that the Applicant be allowed to present its views in the matter.

The Defendant stated that it does not oppose the application.

Both the Plaintiffs and the Applicant have filed their written submissions which have been taken into consideration in this Ruling.

As to the question of the legal provision to be relied upon to enjoin a party as an interested party in a suit, the same is set out in **Order 1 Rule 10(2)** of the **Civil Procedure Rules, 2010** which provides as follows:

“The court may at any stage of the proceedings... and on such terms as may appear to the court to be just, order ...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.**”

My interpretation of this provision is that a person, other than the plaintiff or defendant, may be added as a party to the suit provided that his presence before the court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit.

The next question which arises is whether the Applicant is such a party. To answer that question, one has to consider the nature of the Plaintiffs' claims in this suit and whether the Applicant is in such a position as to assist the court effectually and completely adjudicate and settle those claims. This suit is based on the claim by the 1st and 2nd Plaintiffs that they are the duly registered proprietors of L.R. No. 24861/1 and L.R. No. 24861/2 respectively and that they are therefore entitled to exercise all the rights emanating from such ownership, including developing the said lands, without interference from any quarter. The Defendant's contention is that the said lands comprise part of Ngong Forest and that the Plaintiffs are not therefore entitled to exercise ownership rights over the same as they are purporting to do. The question therefore is what role the Applicant can play in this dispute to assist the court determine same. From the information supplied by the Applicant to this court, they contend that they are pursuing this suit as a public interest organization representing the interest of Kenyans generally. However, nothing has been shown to this court that the Applicant has any information which can be used by this court to determine the dispute herein. This being a dispute on title to land, the evidence required by this court to determine this suit is peculiarly within the control of both the Plaintiffs and the Defendant but not the Applicant.

I am therefore not convinced that adding the Applicant to this suit as an interested party will in any way assist the court in making a fair determination of this suit.

Arising from the foregoing, this application is hereby dismissed. Let each party bear their own costs.

SIGNED AND DELIVERED AT NAIROBI THIS 1st

DAY OF NOVEMBER 2013

MARY M. GITUMBI

JUDGE