



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC JUDICIAL REVIEW APPLICATION NO. 90 OF 2019

(FORMERLY NAIROBI ELC JR APPLICATION NO. 82 OF 2018)

REPUBLIC.....APPLICANT

VERSUS

LAND REGISTRAR, KAJIADO NORTH.....RESPONDENT

AND

KAGENI W. WAHINYA.....EX PARTE APPLICANT

AND

FRIDAH KATHURE KIRIMI.....PROPOSED INTERESTED PARTY

RULING

What is before Court for determination is the proposed Interested Party's application dated the 19th September, 2018 brought pursuant to Order 53 Rule 3(2) of the Civil Procedure Rules. In the said application, she seeks leave to be enjoined in this suit as an interested party and for there to be stay of these proceedings pending the outcome of the **Ngong CMC ELC No. 60 of 2018 Fridah Kathure Kirimi V Marituai Karingithe , Land Registrar Kajiado North and Kageni Njoroge Wahinya**.

The application is premised on the grounds on the face of it and the supporting affidavit of Fridah Kathure Kirimi where she confirms being the registered proprietor of land parcel number Ngong/ Ngong/ 51352 and having instituted **Ngong CMC ELC No. 60 of 2018 Fridah Kathure Kirimi V Marituai Karingithe, Land Registrar Kajiado North and Kageni Njoroge Wahinya**. She contends that the aforementioned suit relates to the same parties and subject matter with the fulcrum therein revolving around determination of the proprietary interest. Further, that the suit is yet to be determined. She has sought to bring to the attention of the court the existence of the said suit and that its outcome will have an adverse effect on the proceedings herein. She insists she has to be made a party to this suit so as to ventilate her cause. Further, that no prejudice will be occasioned by the ex parte applicant if she is made a party to this suit.

The ex parte applicant KAGENI W. WAHINYA opposed the application by filing a replying affidavit where she deposes that the title held by the proposed interested party is a forgery as the vendor denied selling the land to her in Ngong CMC ELC No. 60 of 2018. She contends that the application is meant to assist the Applicant have the court legalize her title which she obtained illegally. She explains that the application before court seeks to have the Respondent committed to civil jail for disobeying the Honourable Court's orders and has nothing to do with ownership of land. Further, that contempt of court applications are personal to the Respondent. She insists no prejudice will be suffered by the Applicant. Further, that the instant application is not made in good faith. She explains that having a title to the suit property does not prove ownership as she also has a title that is in the custody of the Respondent. Further, that if the Applicant's title was genuine and existed before 2015, the Respondent should come to court to explain so.

The Respondent did not oppose the application.

The Applicant filed her submission to canvass the instant application.

Analysis and Determination

Upon consideration of the instant application, rivalling affidavits and submissions, the following are the issues for determination:

- Whether FRIDAH KATHURE KIRIMI should be enjoined as an interested party in this suit.

- Whether these proceedings should be stayed pending the outcome of the Ngong CMC ELC No. 60 of 2018 Fridah Kathure Kirimi V Marituai Karingithe , Land Registrar Kajiado North and Kageni Njoroge Wahinya.

As to whether FRIDAH KATHURE KIRIMI should be enjoined as an Interested Party in this suit.

Before determining this issue, it would be pertinent to define an interested party. Black's Law Dictionary 10th Edition, defines an interested party as

"A party who has a recognizable stake (and therefore standing) in the matter"

The proposed interested party seeks to be enjoined in this suit claiming she is the owner of the suit land and will assist the Court in the just and expeditious determination of the issues herein. It is her averment that she has a Certificate of Title in respect to the suit land. Further, that she had filed the aforementioned Ngong Case that seeks to determine her proprietary interest. The ex parte applicant opposed the application and insists the same has not been made in good faith. Further, there is no prejudice that the proposed interested party will suffer since the instant application seeks to cite the Respondent for contempt.

The proposed interested party in her submissions reiterated her claim and relied on the case of **Moses Wachira Vs Niels Bruel & 2 Others (2015) eKLR** to support her argument to be enjoined in the suit.

From a cursory look at the various pleadings and documents filed herein, I note the Applicant has indeed presented a Certificate of Title issued in 2011. Further, no party has disputed the existence of the aforementioned suit pending at the Chief Magistrate's Court in Ngong and the fact that it is related to the instant suit. The ex parte applicant however insists the title held by the proposed interested party is a forgery yet this is an issue set for determination.

Order 1 Rule 10 of the Civil Procedure Rules stipulates as follows:

'(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit. (2) 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.'

In the case of **Trusted Society of Human Rights v Mumo Matemo & 5 others [2014] eKLR**, the Supreme Court held that: ***' an interested party is one who has a stake in the proceedings though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.'***

Further in the case of **Joseph Njau Kingori vs. Robert Maina Chege & 3 others [2002]eKLR** Nambuye J as she then was, provided the guiding principles to be adhered to when an intending interested party seeks to be joined in a suit: ***' When the above principles are applied to the facts of these applications it is clear that the guiding principles when an intending party is to be joined are as follows:(1) He must be a necessary party; (2) He must be a proper party; (3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff; (4) The ultimate order or decree cannot be enforced without his presence in the matter; (5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.'***

In relying on the facts as presented, Order 1 Rule 10 of the Civil Procedure Rules and Judicial Authorities cited above, from the Certificate of Title presented by the proposed interested party and noting it touches on the dispute herein, it is evident that the presence of FRIDAH KATHURE KIRIMI is necessary to enable the court effectually and completely adjudicate upon this suit. Further that the ultimate orders and decree made in the suit herein will not be enforced without her presence in the matter. I disagree with the ex parte applicant that she is not a necessary party to this suit as she holds a Certificate of title which will be affected with the orders sought to be implemented by the Land Registrar. I find that it would be pertinent for her to be enjoined in the proceedings herein to enable the Court arrive a proper determination of the suit her. I further find that no prejudice will be suffered by the ex parte applicant and in exercising my discretion I direct that FRIDAH KATHURE KIRIMI be enjoined in this suit as an interested party.

As to whether these proceedings should be stayed pending the outcome of the Ngong CMC ELC No. 60 of 2018 Fridah Kathure Kirimi V Marituai Karingithe , Land Registrar Kajiado North and Kageni Njoroge Wahinya.

The interested party has sought to stay the proceedings herein pending the outcome of the aforementioned case filed in Ngong where the fulcrum therein revolves around determination of proprietary rights over the suit property. This fact has been opposed by the ex parte applicant. In the case of **Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000** Ringera J (as he then was) when dealing with an application for stay of proceedings had this to say:

"As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the

intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously” (emphasis added)

From the evidence before me, I note the Applicant seeks to stay the proceedings herein as there is a related matter. I however note that the dispute pending in Ngong concerns proprietary interest over the suit property while the dispute herein revolves around contempt proceedings. To my mind, I do not think it would be prejudicial if this matter proceeded as it will not determine the proprietary interest in respect to the suit property which is the fulcrum of the dispute in the Ngong matter. Further, I opine that the stay sought by the Applicant would actually hamper the expeditious disposal of the instant case. At this juncture I am unable to grant a stay as requested but direct the matter to be set down for hearing.

It is against the foregoing that I find the instant application partially merited and will proceed to allow prayer No. 2 but decline prayer No. 4.

The costs of this application will be in the cause.

Dated signed and delivered in open court at Kajjado this 25th day of November, 2020

CHRISTINE OCHIENG

JUDGE