



LAWRENCE NGINYO KARIUKI..... APPLICANT

V E R S U S

ABDULAZIZ BALALA.....1ST RESPONDENT/PETITIONER

GEORGE KARANJA MUKURIA..... 2ND RESPONDENT

THE COMMISSIONER OF POLICE..... 3RD RESPONDENT

THE ATTORNEY-GENERAL.....4TH RESPONDENT

R U L I N G

This is a Notice of Motion dated 17th March, 2009 filed by M/s Mbugua, Atundo & Macharia advocates for the applicant named as **LAWRENCE NGINYO KARIUKI**. The respondents are named as **ABDULAZIZ BALALA** (1st respondent) **GEORGE KARANJA MUKURIA** (2nd respondent), **THE COMMISSIONER OF POLICE** (3rd respondent) and **THE ATTORNEY-GENERAL** (4th respondent).

The application is said to have been brought under Rule 23 of the Constitution of Kenya (**Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual**) High Court Practice and Procedure Rules 2006 (**L.N. No. 6 of 2006**) and section 79 of the Constitution of Kenya. The orders sought are four, the first one of which has been spent, as follows-

1. (Spent)
2. *That the applicant be enjoined in the proceedings herein.*
3. *That upon granting prayer (2) above, leave be granted to the applicant to file and serve his affidavit, list of authorities and skeleton arguments.*
4. *That the costs of the application be in the cause.*

The application has grounds on the face of the Notice of Motion which are firstly, that the applicant is the original rightful owner of the piece of land known as 3953/1/MN comprised in the grant registered in the land titles registry Mombasa as CR1795/10; secondly, that **ABDULAZIZ BALALA** acquired the title to the property fraudulently and thereafter sold the same to **GEORGE KARANJA MUKURU**. The application was filed with a supporting affidavit sworn by the applicant on 17th March, 2009.

The application is vehemently opposed. The 1st respondent (**who is petitioner in the main cause**) through their counsel M/s Taib A. Taib advocate filed grounds of opposition in the following terms-

1. *The application is misconceived and is bad in law.*
2. *The application is incurably defective.*

3. ***The application does not lie.***
4. ***The applicant has no legal or statutory right to be joined in these proceedings.***
5. ***The application is vexatious and an abuse of the process of the court.***

The 2nd respondent opposed through his counsel Kimwere Josphat & Co. advocates opposed the application by filing submissions. The contention was that the 2nd respondent was an innocent purchaser who had acquired all rights to the suit property and that the suit was for this court to validate the transfer. This was done through his counsel M/s Kimwere Josphat & Co. advocates.

The 4th respondent, who appeared for himself and the 3rd respondent, filed written arguments mainly that the police have an obligation to investigate instances of crimes, which was their statutory duty under the Police Act.

Several court cases were cited in support of the responses of the respondents.

In my view, having considered all the arguments put across, they appear to go to the merits of the matter, rather than the issue as to whether a person should or should not be joined as a party in a Constitutional application.

The petition in which this application was filed relates to land or property known as No. 3953/section 1/ MN North (**Mombasa**). The applicant claims to be the actual owner of that land, and that the petitioner (**1st respondent**) fraudulently sold the same to a third party. I observe that the police are doing criminal investigations with respect to the sale, and the petitioner appears to be opposing those investigations by the police by filing the main **PETITION** herein.

In my view, the subject being the protection of rights to private property under Constitution, there is a lot of merits in allowing the applicant, who claims to be the actual owner of the property to be joined as a party in the petition. That joinder will be both fair and in the interests of justice. Any attempt by the petitioner to prevent the joining of the applicant herein as a party, will in my view, give the impressions of the **mala fides** on the part of the petitioner, which the petitioner should avoid if he is genuinely fighting to protect his Constitutional rights to property and freedoms. His Constitutional rights have to be balanced against other person's Constitutional rights.

For the above reasons, I allow the application and order as follows-

1. ***The applicant is hereby enjoined in the proceedings herein as an interested party.***
2. ***The petitioner will serve the petition on the Applicant within seven (7) days from today. Thereafter the applicant will within 14 days file his replying affidavit, and will be at liberty to file arguments and lists of authorities.***
3. ***Costs of the application will be in the cause.***

It is so ordered.

Dated and delivered at Nairobi this 6th day of October, 2009.

GEORGE DULU

JUDGE.