



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 483 OF 2013**

**DANIEL KIPKOSGEI RONO.....PLAINTIFF**

**=VERSUS=**

**JAMES KARIUKI NGANGA.....1 ST DEFENDANT**

**ANGELA MULWA.....1ST INTERESTED PARTY**

**ROSE MBITHE MULWA.....2ND INTERESTED PARTY**

**MORIAH PROPERTIES.....3RD INTERESTED PARTY**

**RULING**

1. Two applications fall for determination in this ruling. The first application is a chamber summons dated 19/10/2018 through which the interested parties seek an order removing them from being interested parties in this suit. The second application is a chamber summons dated 18/6/2019 through which the plaintiff seeks an order redesignating the 1st, 2nd and 3rd interested parties as 2nd, 3rd and 4th defendants, respectively. Because the two rival applications raise a common issue of joinder, I will determine them simultaneously.

2. The dispute in the suit relates to parcels of land subdivided out of **Land Parcel Number Ngong/Ngong/9064 (the original parcel)**. The plaintiff contends that vide a sale agreement dated 26/5/2012, he purchased the original parcel from James Kariuki Nganga (the defendant) at Kshs 2,600,000 out of which he paid 1,415,000 to the defendant. Part of the above money was paid as direct remittance to K-Rep Bank to redeem the title. Upon release of the title to the defendant, the defendant sub-divided the said parcel into two parcels: Ngong/Ngong/56484 and 56485. On 17/4/2012, the defendant transferred **Parcel Number Ngong/Ngong/56485** to the 3rd interested party. The 3rd interested party in turn transferred the said parcel to the 1st and 2nd interested parties on 19/2/2013. The three interested parties contend that the said parcel was subsequently sold to **Group 84 Men Chama** prior to the issuance of the court order dated 23/4/2013.

3. The court record reveals that on 22/4/2013, Mutungi J issued an interim injunctive order preserving the two parcels of land, pending the *interpartes* hearing and determination of the plaintiff's notice of motion dated 19/4/2013. Further, on 29/11/2013, Nyamweya J rendered a ruling in which she issued a *status quo* order preserving the two titles and parcels of land, pending the hearing and determination of this suit. That order has not been vacated by the court. It is against the above background that the court is invited to render itself on the two applications.

4. The interested parties' application was supported by an affidavit sworn on 19/10/2018 by Angela Mulwa. The case of the interested parties is that the 3rd interested party acquired Parcel Number 56485 from the defendant and subsequently sold it to the 1st and 2nd interested parties. The 1st and 2nd interested parties in turn sold the suit property to **Group 84 Men Chama**, a land buying company. They contend that they no longer have any interest in **Parcel Number 56485** and they should therefore be removed from this suit.

5. The plaintiff's application was supported by his affidavit sworn on 18/6/2019. His case is that the interested parties should be made substantive parties to this suit because they are beneficiaries of illegal transactions.

6. Both applications are opposed through rival replying affidavits. The two applications were canvassed through written submissions which I have duly considered. I have also considered the respective respondents' written submissions. The single question falling for determination in the interested parties' application dated 19/10/2018 is whether the interested parties are necessary parties to this suit. The single question falling for determination in the plaintiff's application dated 18/6/2019 is whether there is need to make the interested parties substantive parties to this suit. I will make brief pronouncements on the two questions sequentially in the above order.

7. The criteria upon which our courts exercise jurisdiction to either join one as a party to a suit or remove one from being a party to a suit is spelt out in *Order 1 rule 10 (2) of the Civil Procedure Rules* which provides as follows:

***“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.”***

8. The test to be applied when dealing with the question of joinder and misjoinder is whether the presence of a particular person before the court is necessary in enabling the court to effectually and completely adjudicate upon and settle all questions involved in the suit. *The Court of Appeal* elaborated on the above criteria in *Civicon Limited v. Kivuwatt Limited & 2 others [2015] eKLR* in the following words:

***“Again the power given under the Rules is discretionary which discretion must of necessity be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined.”***

.....

***From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I Rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”***

9. The plaintiff in this suit seeks, among other prayers, an order annulling titles and cancelling entries in land registers relating to Parcel Numbers 9064, 56484 and 56485 in the following verbatim terms:

***a) An order of cancellation of the entries created and/or being subdivisions from Title Ngong/Ngong/9064 to Tile No 56484 & 56485 respectively and a declaration that all steps taken and all documents held by the defendant in regard to the suit land are null and void ab initio and do not confer any interest to the defendants.***

10. From the evidential materials presented to the court, the 1st and 2nd interested parties are still the registered proprietors of **Parcel Number 56485**. If the above order were to be granted, it will adversely affect the interested parties. Secondly, the 1st and 2nd interested parties claim to have acquired Parcel Number 56485 pursuant to a conveyance made to them by the 3rd interested party. This court is by law obligated to hear all the parties likely to be affected by the above order before granting it. In the circumstances, it is the view of the court that the interested parties are and remain necessary parties in the complete and effectual adjudication of this dispute. Consequently, the plea for their removal from this suit is rejected. I now turn to the single question in the plaintiff’s application dated 18/6/2019.

11. The plaintiff seeks to change the status of the interested parties to that of co-defendants in the suit. I have reflected on this plea against the criteria set out in the preceding paragraphs. In my view, given that the plaintiff seeks annulment of titles and cancellation of entries in land parcels and that if the plea is granted, it will adversely affect the interested parties, the interested parties ought to have been made substantive defendants from the beginning. Making them substantive defendants would afford them the opportunity to effectively respond to the plaintiff’s plea for cancellation and annulment orders. Secondly, making them defendants does not in any way prejudice their case. Consequently, the court will, in light of the prayers sought in the main suit, grant the plaintiff leave to amend the plaint and make the interested parties substantive defendants in this suit.

#### **Disposal Orders**

12. In light of the foregoing, I make the following disposal orders in relation to the interested parties’ chamber summons dated 19/10/2018 and the plaintiff’s chamber summons dated 18/6/2019.

***a) The interested parties’ application dated 19/10/2018 is rejected for lack of merit.***

***b) The plaintiff is granted leave to amend the plaint to join the interested parties and any other party likely to be affected by the cancellation and annulment orders sought in this suit as defendants in the suit.***

***c) Parties shall bear their respective costs of the two applications.***

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 11TH DAY OF NOVEMBER 2020.**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Karani for the Defendant

