



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 158 OF 2017

MUATHE MULWA & 21 OTHERS.....PLAINTIFFS/RESPONDENTS

VERSUS

DAVID MUNYAE & 10 OTHERS.....DEFENDANTS

AND

JOSEPH M. NDAKA & 260 OTHERS....INTERESTED PARTIES/APPLICANTS

RULING

1. In the Chamber Summons dated 23rd August, 2017, the Interested Parties/Applicants are seeking for the following orders:

- a. That this Honourable Court be pleased to grant leave to enjoin and or add the Applicants as necessary parties to this suit.*
- b. That leave to issue to any other person wishing to be enjoined to this suit to file their pleadings within a specified period.*
- c. That costs of this Application be provided for.*

2. The Application is premised on the grounds that the Applicants are amongst other persons who purchased portions of the suit land either from the original owners on their families; that the Applicants are in actual occupation and possession of their respective portions of land and that the interests of the purchasers will be affected by the Judgment of this court because they occupy more than 90% of the suit land.

3. The 1st Applicant swore an Affidavit on his behalf and on behalf of the other Applicant. The 1st Applicant deponed that he purchased a portion of the suit land from one Muindi Nguvu, the original owner of the land; that he has extensively developed his portion of land and that he lives on the land with his family.

4. The 1st Applicant deponed that initially, the suit land was occupied by 32 families; that the land is now occupied by more than 8,000 persons and that the Applicants purchased and developed the portions of the suit land.

5. In response, the 1st Respondent deponed that the alleged authority by the Co-Applicants to Andrew Mutuku Mbuvi has not been exhibited, neither has it been filed together with the Application; that the alleged Interested Parties should forward their claims to the respective sellers of their respective portions and that the orders being sought in the Plaint are specific and are directed to specific Defendants.

6. In her submissions, the Applicants' advocate submitted that the Plaintiffs have not denied the existence of the purchasers; that the purchasers stand to suffer great prejudice if the Plaintiffs' suit is heard in their absence and that the orders that have been sought by the Plaintiff will affect the Applicants.

7. The Plaintiffs' advocate submitted that the Applicants have not annexed any authority allowing the deponent of the Supporting Affidavit to appear, plead and act on their behalf.

8. This suit was commenced by twenty one (21) Plaintiffs against eleven (11) Defendants. According to the Plaintiffs' Plaint, Kakuzi Limited transferred by assignment land parcel number L.R. No. 1849 measuring 2.882 acres to each of the 32 members and that the whole land was sub-divided amongst the said members.

9. However, it is the Plaintiffs' case that after the said land was sub-divided, the said land was not distributed among the 32 members equally; that the Defendants were unlawfully given more than 80 acres each of the suit land and that the Defendants are not entitled to more than 80 acres each of the suit land.

10. The Interested Parties want to be enjoined in the suit for having purchased portions of the suit land. It is not clear to this court from whom the Interested Parties purchased the said portions of the suit land. Although the 87th Interested Party has sworn an Affidavit deponing that he was swearing an Affidavit on behalf of the 260 Applicants, he has not exhibited a letter of authority allowing him to plead on behalf of the said Interested Parties. Order 1 Rule 13(1) and (2) of the Civil Procedure Rules provides as follows:

13. (1) Where there are more Plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.

11. In the absence of written authority by the 260 Interested Parties authorizing the 87th Applicant to appear, plead or act for them in this matter, the Application for joinder by the Applicants is unmeritorious. Indeed, the failure by the Applicants to sign such an authority or even have a separate document detailing their national identity card numbers leads the court to conclude that the 261 Applicants are busy bodies whose intention is to delay the finalization of this matter.

12. For those reasons, I dismiss the Application dated 23rd August, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 25TH DAY OF JANUARY, 2019.

O.A. ANGOTE

JUDGE