



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 90 OF 2014

JACINTA WAIRIMU MUBARI.....PLAINTIFF/RESPONDENT

VERSUS

JACKSON KARUA.....DEFENDANT/RESPONDENT

COUNTY GOVERNMENT OF KIRINYAGA.....INTERESTED PARTY

RULING

This ruling arises from an application by counsel for the County Government of Kirinyaga who is the interested party in this case. The applicant is seeking two prayers. First, the learned counsel seeks leave to replace Joe N. Muriuki who is the County Secretary of the interested party with another witness who has knowledge in survey.

The second application by Mr. Wanjau is for this Honourable Court to have a scene visit. According to Mr. Wanjau, learned counsel for the interested party, the intended witnesses will put into perspective how the suit property was acquired by the then County Council of Kirinyaga from one Nyamu Ngari upon compensating him but the documents relating to ownership of the suit property were not registered in the then County Council records. The two witnesses will therefore be people who have expertise on land issues and will assist the Court in bringing out the real issues in controversy. The second limb of the application is also said to be necessary in that after acquiring the suit property from the original owner Nyamu Ngari, the County Council of Kirinyaga in its spirit of expanding the town, alienated plots to certain individuals who have gone ahead to occupy and develop their respective plots. Some of those individuals have been called by the interested party as witnesses and have stated that they are neighbours to one Jackson Karua who has been sued by the plaintiff as defendant in this case for an order of permanent injunction restraining him and any other person claiming under him from inter alia occupying, constructing, working on and/or in any way interfering with the land parcel No. Kabare/Nyangati/3159 which land is measuring more than 2 acres. Since the plaintiff has not annexed a sketch map of the area indicating the extent of his alleged two (2) acre land, it is likely that more interested persons who are not parties to this suit may be affected by any order which is likely to be issued by this Honourable Court unless the order for the scene visit is issued.

That application is opposed by counsel appearing for the plaintiff Ms Ndorongo in equal measure. However, the application was supported by Mr. Arimi Kimathi for the defendant.

I have considered the arguments both in support and in opposition to the application by Mr. Wanjau advocate for the interested party. It is not in dispute that this suit was confirmed for hearing before today's hearing was taken. It is not also in dispute that the plaintiff and the defendant have closed their cases. It can therefore be argued, and rightly so, that any introduction of new witnesses and new evidence will change the dynamics of the plaintiff and the defence case. Having said that, it is also important to note that the arguments given by the counsel for the interested party are weighty issues which are crucial and may likely bring out the real issues in controversy in this case. There is no doubt in my mind that the plaintiff and the defence have closed their case but it is necessary to allow the additional evidence to assist the Court to determine the issues in dispute fairly. If either the plaintiff or the defence feel that they require any additional evidence or the re-calling of those that have testified to clarify any issues that may arise, they are free to make such a request and this Court will not hesitate to consider such an application in the interest of justice.

It is important to note that **Article 159 of the Constitution of Kenya 2010** was made to cure any procedural technicalities that for a long time had hindered parties from accessing the seat of judgment. That is no longer the case and parties are now in a position to bring out their issues without procedural technicalities. For all the reasons I have stated herein above, the application by Mr. Wanjau is allowed in the following terms:

- (1) The interested party is granted leave to file and serve statements for their two additional witnesses within 7 days from today.***
- (2) The plaintiff and the defendant are granted corresponding leave to file and serve statement (s) of any witness (s) necessitated***

by the additional witnesses called by the interested party under paragraph 1 above.

(3) The Court's Deputy Registrar to accompany the plaintiff and the defendant's representatives (one each) on scene visit to the plaintiff's alleged property No. Kabare/Nyangati/3159 and to make observations including but not limited to the following:

(a) Whether the plaintiff lives in the land?

(b) The extent of the land and the developments, if any?

(c) Whether there are any developments on the property?

(d) Who are the occupants if any?

(4) The scene visit to be agreed upon by the parties on 24th January 2019.

READ and SIGNED in open Court at Kerugoya this 24th day of January 2019.

E.C. CHERONO

ELC JUDGE

24TH JANUARY, 2019

In the presence of:

- 1. Ms Makworo holding brief for Ms Ndorongo for Plaintiff**
- 2. Mr. Asimwe holding brief for Mr. Wanjau for Interested party**

MS MAKWORO

We can take a mention date before the Deputy Registrar.

MR. ASIIMWE

That is o.k.

COURT

Mention before the Deputy Registrar on 13th February 2019 to take a convenient date for scene visit.

E.C. CHERONO

ELC JUDGE

24TH JANUARY, 2019