



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 71 OF 2018**

**AMOS ATOTO NYAWAKA.....PLAINTIFF**

**VERSUS**

**VIJAY MORJARIA.....DEFENDANT**

**RULING**

What is before court for determination is the Defendant's Chamber Summons application dated the 20<sup>th</sup> July, 2018 brought pursuant to Order 1 Rule 15 of the Civil Procedure Rules, Section 1A, 1B, 3A of the Civil Procedure Act and all the other enabling provisions of the law.

The Defendant seeks for orders that a Third Party Notice should issue to one ALFRED ONGERA NDEMO who sold them land parcel numbers NGONG/ NGONG/ 88307 and NGONG/ NGONG/ 88308 (originally NGONG/ NGONG/ 14013) hereinafter referred to as the 'suit lands'.

The application is supported by the affidavit of VIJAY MORJARIA where he deposes that at the time of negotiations to purchase the suit lands, the proposed Third Party had issued them with a copy of the Sale Agreement of the suit lands to prove he had purchased the same from the Plaintiff. He contends that pursuant to the Sale Agreement between themselves and the proposed Third Party, it confirms that together with his brother Hitesh Morjaria, they are the registered proprietors of the suit lands. He reiterates that since the Plaintiff is seeking injunctive reliefs against him to have trespassed on the suit lands, it is only fair that ALFRED ONGERA NDEMO be enjoined in this suit.

The Plaintiff opposed the instant application by filing Grounds of Opposition dated the 15<sup>th</sup> August, 2018 where he averred as follows:

1. The application dated 20<sup>th</sup> July, 2018 is bad in law, fatally defective and incurable by amendment.
2. That the provisions of the law relied upon by the Defendant do not avail.
3. The Intended Third Party had no interest in the property known as LR. No. Ngong/ Ngong/ 14013 that was to be transferred to the Defendant.
4. The Intended Third Party has never been the registered owner of the property known as LR. No. Ngong/ Ngong/ 14013.
5. The entire application is a non – starter and amounts to abuse of the Court Process

Both parties filed their respective submissions, which I have considered.

**Analysis and Determination**

Upon considering the materials filed in respect of the instant application, the only issue for determination is whether ALFRED ONGERA NDEMO should be enjoined in this suit as a Third Party.

Order 1 Rule 15 (1) of the Civil Procedure Rules stipulates as follows:

**' (1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party) — (a) that he is entitled to contribution or indemnity; or (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,**

he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers *ex parte* supported by affidavit..'

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 party seeks to be joined in a suit and stated as follows: '**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.**'

Further, in the case of *Yafesi Walusimbi -vs- Attorney General of Uganda (1959) EA 223*, the Court emphasized that:

***“In order to join a third party the subject between the third party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same.”***

From the materials presented, it is evident that the proposed third party sold the suit lands to the Defendant. Further, that there was a Sale Agreement between himself and the Plaintiff. I note the Plaintiff claims he is the proprietor of land parcel number NGONG/ NGONG/ 14013 which is now been subdivided to NGONG/ NGONG/ 88307 and NGONG/ NGONG/ 88308 respectively. It is the two parcels of land that were sold to the Defendant and his brother Hitesh Morjaria, by the proposed third party. It is my considered view that the proposed Third Party is a necessary and proper party to the proceedings herein. Further, that the relief sought by the Plaintiff over the suit lands, cannot be determined unless he is present in Court. I opine that that the proposed third party is indeed key to the proceedings herein as it would be pertinent for him to present evidence as to how he proceeded to dispose of the suit lands to the Defendant.

It is against the foregoing and in relying on Order 1 Rule 15 (1) of the Civil Procedure Rules as well as the judicial authorities cited above, I find that the proposed third party indeed meets the criteria set out for a Third Party and his involvement will be necessary to enable the court effectually and completely adjudicate upon this suit. Further that the ultimate orders and decree made in this suit will not be enforced without his presence in the matter. I further find that no prejudice will be suffered by the Plaintiff if the proposed Third Party is allowed to be enjoined in this suit.

In the circumstances, I proceed to allow the application dated the 20<sup>th</sup> July, 2018 and direct that

the Third Party be served within 14 days from the date hereof. I further direct that upon service, the Third Party do file his response within 14 days.

The costs will be in the cause.

**Dated signed and delivered in open court at Kajiado this 14th day of February, 2019**

**CHRISTINE OCHIENG**

**JUDGE**