



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC NO. 544 OF 2014**

**(Formerly Nyeri HCC No. 121 of 2012 (O.S))**

**RICHARD MAINA KABA.....PLAINTIFF**

**KIMONDO GITHUI .....DEFENDANT**

**-VERSUS-**

**FRANCIS KARORI MURAGE.....APPLICANT**

**RULING**

1. On 15<sup>th</sup> September, 2014 Francis Karori Murage (hereinafter referred to as the applicant) brought the notice of motion of even date praying that he be made a party to this suit and that this suit be consolidated with Nyeri HCCA No. 24 of 2014.
2. The application is premised on the ground that the applicant has an interest in the proceedings in this suit and the appeal as he is a bona fide purchaser for value of the subject matter of the suit to wit LR. No. Ruguru/ Kiamariga/1189 having bought it from the defendant in this suit.
3. It is pointed out that both the plaintiff herein and the applicant are claiming interest in the suit property, the plaintiff on account of having been in adverse possession thereof and the applicant on account of having bought it from the defendant.
4. Terming the suit herein a well-choreographed scheme between the plaintiff and the defendant to defeat his interest in the suit property, the applicant urges the court to grant him the orders sought.
5. The application is opposed on the grounds that the appellant in the appeal is not a party to these proceedings and that the applicant's claim is dissimilar to that of the plaintiff.
6. According to the plaintiff, the applicant should institute another suit to pursue his claim.
7. When the application came up for hearing, the advocates for the parties reiterated the parties' respective positions concerning the application. In that regard, counsel for the applicant maintained that the applicant has an interest in the suit property as he is a purchaser for value of the suit property from the defendant, who is the registered proprietor thereof.
8. Explaining that the suit herein is for adverse possession against the defendant, who is the registered proprietor of the suit, counsel for the respondent submitted that the applicant not being the registered proprietor of the suit property is not a necessary party to the suit.
9. Terming the applicant a stranger without any interest in the current proceedings and a stranger in the proceedings which are the subject matter of the appeal herein, counsel for the respondent reiterated the contention that the applicant is not a necessary party to these proceedings.
10. Concerning the plea for consolidation of this suit with the appeal, he submitted that an appeal is incapable of being consolidated with a suit.

**Analysis and determination**

11. As pointed out above, the applicant *inter alia* seeks leave to join this suit on the ground that he has interest in the subject matter of the

suit. In that regard, it is pointed that he is a bona fide purchaser for value of the suit property. It is also pointed out that both the plaintiff and the applicant have an interest in the suit property.

12. Having considered the issues raised in this suit vis-à-vis the law on joinder of parties as set down in **Order 1 Rule 10(2)** of the Civil Procedure Rules, I find and hold that the applicant is a necessary party in this suit for purposes of assisting the court to effectually and completely adjudicate and settle all issues raised in the suit. See the said section of the law 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.”**

13. As to whether this suit can be consolidated with the Appeal, I agree with the respondent’s advocate that a suit cannot be consolidated with an appeal as the procedures and issues to be considered are different.

14. Consequently, I allow the application in terms of prayer 1 only.

15. The costs of the application to abide the outcome of the suit.

**Directions**

16. The applicant is given leave to file his response/pleadings within 14 days from the date of delivery of this ruling.

17. Orders accordingly.

**Dated, Signed and Delivered in open court at Nyeri this 13<sup>th</sup> day of February, 2019.**

**L N WAITHAKA**

**JUDGE**

Coram:

Mr. A. J. Kariuki for the plaintiff/respondent

Ms Mwangi h/b for Mr. Kiminda for the defendant and for applicant

Court assistant - Esther