



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC NO. 504 OF 2013

MATHIAS MASINDE MUMBWANI.....PLAINTIFF

VERSUS

STELLA CHERUTO.....1ST DEFENDANT

DAVID KIPEL BUKWEYA.....2ND DEFENDANT

THE LAND REGISTRAR UASIN GISHU COUNTY.....3RD DEFENDANT

AND

MARY LIHAVI MUTSAMI.....INTENDED INTERESTED PARTY

RULING

This ruling is in respect of an application dated 14th November 2018 brought by way of notice of motion by the interested party seeking for the following orders:

- a) Spent
- b) That MARY LIHAVI MUTSAMI be granted leave to be enjoined in this suit as an interested party.
- c) That the costs of this application be in the cause.

This matter came up for hearing on 24th September 2018 when the parties agreed to enter into a consent which in effect compromised the suit. The County Land Surveyor went to the ground and implemented the court order as per the consent of the parties.

The implementation of the order by the County Land Surveyor is what triggered the filling of this application by the applicant.

Applicant's Submission

Counsel for the proposed interested party submitted that the applicant has shown that she has an interest in the suit land by annexing a letter from the Chief which indicates that there has been a land dispute since 2011. It was Counsel's submission that the applicant has been following the suit to get her portion

of the land.

Mrs Khayo submitted that the applicant should be enjoined to enable her ventilate her issues as the suit land touches on the land that belonged to the deceased husband of the applicant. Counsel stated that the agreements alone cannot be proof of ownership of the land. Counsel therefore urged the court to allow the application as prayed.

Respondent's Submission

Counsel for the respondent opposed the application by filing a replying affidavit with annexures. It was Counsel's submission that the application is an abuse of the court process. Counsel submitted that the deceased husband to the applicant sold 2 ¹/₂ acres to the plaintiff vide an agreement dated 2/2/92 which he annexed to the replying affidavit.

Mr. Ndege submitted that the deceased later went to the Land Control Board and obtained a consent dated 25/2/93 and subsequently a title deed was issued to the 1st defendant who was holding the same in trust for the plaintiff.

Counsel further submitted that the rights of the deceased were extinguished after the issuance of the consent to transfer and thus the wife of the deceased cannot come to court to claim entitlement. Mr Ndege also submitted that the applicant was even a signatory to the agreement of sale and is not staying on the suit land as they moved out to buy land in Soy with the amount they were paid.

Mr. Ndege further submitted that the 1st defendant has not denied holding the suit land in trust for the plaintiff and that is why they entered into a consent to subdivide the land which has been done as per the court order. Further that the annexure by the applicant shows that the land dispute is between Mathias Mumbwani and Milka Chemutai and that this matter was filed in 2013 and the applicant has never appeared in court to show any interest that she has.

Counsel therefore urged the court to dismiss the application as the applicant has not shown any interest in the case.

In response Counsel for the applicant submitted that the supporting affidavit shows that the applicant is entitled to 1 ¹/₂ acres and that she learnt of the suit when surveyors went to the ground to demarcate.

Analysis and determination

The issues for determination in an application to enjoin a party to a suit are as follows:

- 1) Whether the applicant may be enjoined as an interested party in this suit in accordance with the Civil Procedure Rules?
- 2) Whether the applicant has demonstrated that she has a stake or an interest in the subject of the suit or in other relevant matter affecting the suit?
- 3) Whether the interested party will be affected by the decision in this suit
- 4) Whether enjoining the interested party will avoid multiplicity of suits and save judicial time?

Does the applicant meet the threshold above? Does she have a demonstrable stake in the case or an interest in the subject of the suit and finally would enjoining the applicant to this suit avoid filing of multiplicity of suits and save the courts time? See the case of **Maria Soti Educational Trust -vs- Registrar of Titles & Another 2014 eKLR**, where Sila Munyao J highlighted the thresholds.

The question that the court must answer is whether the applicant will be affected by the decision of the

court in this matter. The supporting affidavit of the applicant has a letter from the chief indicating that there is a dispute between the late husband and one Milka Chemutai and not the plaintiff herein. The chief's letter remains as such without any further documentation to show what transpired thereafter. This is a letter that was written in 2011 to the District Officer and nothing else has been annexed on the follow up to the said dispute.

The respondent has annexed agreements to show that there was a land sale agreement between the plaintiff and the applicant's late husband where she was a witness and a signatory. She appended her signature and her ID No. Further there was a Land Control Board Consent which culminated to a title being issued.

This matter was filed in 2013 and the applicant has just woken up from her deep slumber after the train has left the station. She stated that she has been following the suit to get her portion. How was she following the suit? By waiting for it to be determined so as to be enjoined in the suit or what prevented her from asserting her rights if any.

I find her evidence contradictory as on the one hand she says she was following the suit and on the other hand that she became aware of the suit when the surveyors went to the ground to subdivide the land. This shows that she was trying her luck with the court.

In the case of **Communications Commission of Kenya & 30 others versus Royal Media Services Ltd & 7 others Supreme Court of Kenya at Nairobi in petition No. 14 of 2014**, stated under paragraphs 22 and 23 of their ruling as follows:-

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause....”

Courts should also guard against allowing busy bodies who have no interest in a case to muddle the waters for their own selfish gains or squaring certain scores. That is why it is incumbent upon a party claiming to have an interest to establish such interest. The other issue is that parties should also not use the backdoor to come into a case having failed to assert their rights at the opportune time. When such a party had participated in the transaction but now wants to renege on it, then they should look for other fora to do so and not abuse the court process.

It is evident that the applicant was a signatory to the sale agreement and if she was aggrieved, then she should have raised the issue when this suit was filed in 2013. It is not clear whom she has a problem with because the Chief's letter dated 2011 is in respect of a dispute with Milka Chemutai who is also deceased.

It should be noted that the Civil Procedure Act is silent on the concept of “interested party”. The procedure for joining a necessary party is indicated by the Order 1 rule 10 (2) of the Civil Procedure Rules is available to either party to move the court, so that a person who is not a party but who seeks to join may be joined in the case and invoke the inherent jurisdiction of the court and the overriding objective of the civil process.

Rule 2 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 defines an interested party as follows:-

“Interested party” means a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation;”

Rule 7 (2) provides that a court may on its own motion join any interested party to the proceedings before it. The broad principles which should govern disposal of an application for joinder are that the court can, either on an application made by any interested party or on its own motion direct any person as party

to be enjoined in the proceedings.

This gives the court discretion in such applications but the same must be exercised judiciously according to sound principles. I have considered the application, the submissions of Counsel and come to the conclusion that this is not one of the cases that I will exercise my discretion in favour of the applicant. The applicant has failed to demonstrate that she has a stake in the suit land. Bringing her on board would delay the finalization of this suit and convolute it further.

If she has a claim against any of the parties then nothing stops her from filing her own suit against the parties that she chooses. That will not amount to multiplicity of suits. On that I find her application lacks merit and is therefore dismissed with costs to the plaintiff, 1st and 2nd defendants.

DATED and delivered at Eldoret this 7th day of February, 2019

M.A. ODENY

JUDGE

RULING read in open court in the presence of Mr.Yego holding brief for Mr.Isiji for 1st and 2nd defendants and in the absence of the other parties.