



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

THIKA LAW COURTS

ELC CASE NO.396 OF 2017

MARGARET WARUIRU NGURU

(Suing as the Representative of the estate of

LUCY WANJIKU NDUKUI *alias* WANJIKU

NDUKUI(Deceased).....PLAINTIFF/RESPONDENT

-VERSUS-

MARGARET MUTHONIDEFENDANT/APPLICANT

AND

PETER NJOROGE KINYANJUI.....PROPOSED CO-DEFENDANT

RULING

This suit was instituted on **10th December 2012**, wherein the Plaintiff filed a **Plaint** and sought for a declaration that all the titles issued to the Defendant being **Gatuanyaga/Ngoliba Block 1/140**, are invalid and should be cancelled and the title revert to the name of **Lucy Wanjiku Ndukui**. Simultaneously, the Plaintiff filed a **Notice of Motion** application and sought for injunctive restraining orders against the Defendant.

However, by a **Ruling** dated **19th July 2013**, the said application was dismissed. Further, vide an application dated **2nd November 2017**, the Defendant alleged that the Plaintiff has now sold the suit property to **Peter Njoroge Kinyanjui**, and she sought the said **Peter Njoroge Kinyanjui** to be **enjoined** in the suit as a **Co-Defendant** and also sought for temporary injunctive and/or restraining orders against the Plaintiff and the proposed

Co-Defendant.

Order 1 Rule 10(2) is very clear on joinder of parties. It states 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.”

Given that the proposed Co-Defendant has not denied purchase of the suit property, the **Court finds that he is a necessary party and thus enjoin him to this suit.**

On the issue of injunction, the Defendant/Applicant is the allegedly registered owner of the suit property. Since the issue of whether she acquired the said registration fraudulently or not has not been settled, the **Court finds that it is necessary to restrain the Plaintiff and the Co-Defendant from further dealing on the said suit property.**

Consequently, the **Court allows prayers No.4 of the Notice of Motion dated 2nd November 2017 with costs to the Defendant/**

Applicant.

Further, since this is a **2012** matter, the Court finds that the same should be set down for hearing. The Co-Defendant to be served with pleadings within the next 7 days from the date hereof and Co-Defendant has 14 days to file his pleadings.

Thereafter parties are directed to comply with Order 11 within the next 15 days from the date of filing the Co-Defendant's pleadings and then appear for ***Pre-trial directions*** on **27th May 2019** and taking of a hearing date.

It is so ordered.

Dated, Signed and Delivered at Thika this 20th day of March 2019.

L. GACHERU

JUDGE

20/3/2019

In the presence of

M/S Nyakiano holding brief for Mr. Karuga Wandai for the Plaintiff/Respondent

M/S Kabata holding brief for Njoroge Kugwa for Defendant/Applicant

Mr. Kamau holding brief for Prof. Kiama for proposed Co-Defendant

Lucy - Court Assistant

L. GACHERU

JUDGE

20/3/2019