



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO. 341 OF 2015

EDWINA MONICAH OHINGO.....PLAINTIFF

VERSUS

MARY KWAMBOKA.....DEFENDANT

RULING

1. Mary Kwamboka, the Defendant, vide the Chamber Summons dated the 11th July 2017, seeks to have the District Land Registrar, Kisumu County, District Surveyor, Kisumu County, William Okal, Joel Wasonga, Stela Irungu, Flora Kagend Bora, Manasse Obala Ofire, Rosemary Achola Oduor, Ondera Ongudu, Dorothy Anyando Bonyo, Jeremiah Ogola Rajwayi, Benson James Anyango Amadi, Carmeline Nchoki Tado, Charles Achieng Odunga, Dorcas Adhiambo Atieno, Spring Ministries and Eunice Achola Miruka, the proposed Interested Parties, enjoined in this suit as Interested Parties and or Defendants, and be allowed to file their pleadings, and participate in the proceedings. The Defendant also prays for costs to be provided for. The application is based on the five grounds on its face and supported by the affidavit of the Defendant sworn on the 11th July 2018.

2. The application is opposed by Edwina Monicah Ohingo, the Plaintiff, through her replying affidavit sworn on the 8th September 2017.

3. The application came up for hearing on the 13th November 2018 when Mr. Oriero and Nyanga, Learned Counsel for the Defendant and Plaintiff respectively made their oral rival submissions for and against the application.

4. The following are the issues for the court's determination;

a. Whether the proposed Interested Parties are necessary parties to be enjoined in the suit for the issues in this suit to be determined.

b. Who pays the costs.

5. The Court has carefully considered the grounds on the Chamber Summons, affidavit evidence by the parties, oral submissions by both Counsel, the pleadings and come to the following conclusions;

a. That from the pleadings filed by the Plaintiff, she claims beneficial ownership of Kisumu/Konya/4760 and 4761 and seeks for eviction order, costs and interest against the Defendant.

b. That the Defendant's defence is that she lawfully bought Kisumu/Konya/4760 and 4761 from Manase Obala Ofire, and hence should not be evicted, and that the matter being a boundary dispute should be handled by the Land Registrar.

c. That the parties' Counsel, by consent of the 10th October 2016, agreed to have the County Land Registrar and surveyor visit the suit lands and file their report. That the report thereof has been filed through the forwarding letter dated the 5th September 2017. That the Defendant has not shown how the County Land Registrar and Surveyor are involved in the issues in this suit and therefore, the court finds no evidence has been presented to require the two offices to be enjoined as interested parties herein. That in respect of the other 15 (fifteen) proposed Interested Parties, the pleadings filed so far have not shown how they are related to the dispute between the parties so as to be necessary parties for the determination of the issues before the court.

d. That further to (c) above, the court finds that as the pleadings so far filed shows the issues for determination are only between the parties herein, and that the Plaintiff has clearly indicated she does not want to have the issue of Amadi encroaching onto her land to be dealt with in this suit; that there exists Kisumu CM. Misc. App. No. 35 of 2014 where some orders on registration of mutation forms and issuance of title deeds were issued on the 5th August 2014; and further as none of the proposed Interested Party has come forward to lodge or claim an interest on the suit properties so far, the application is found to be without merit.

6. That flowing from the foregoing, the Chamber Summons dated the 11th July 2017 is without merit and is dismissed with costs.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 6TH DAY OF MARCH 2019

In the presence of:

Plaintiff Absent

Defendant Absent

Counsel Mr. Bii for Nyanga for Plaintiff

Mr. Yogo for Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE