



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT & LAND COURT

ELC CASE NO. 816 OF 2012

(AS CONSOLIDATED WITH ELC CASE NO. 47 OF 2010)

RAJAB AHMED KARUME.....PLAINTIFF

VERSUS

THE CHIEF REGISTRAR.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

INSURANCE TRAINING AND EDUCATION TRUST.....3RD DEFENDANT

AND

BEN NYAKUNDI.....PROPOSED INTERESTED PARTY/APPLICANT

RULING

1. The Applicant Ben Nyakundi filed a Chamber Summons dated 28th September, 2018 in which he sought to be enjoined in these proceedings as an Interested Party. The Applicant contends that he is the rightful allottee of L.R No. 209/10210 (suit property). He argues that any decision which may be arrived at by this Court will affect him and that it is fair that he is enjoined in this case to avoid a situation where he will have to file his own suit which may ultimately cause the Courts issuing conflicting decisions on a matter which is similar.

2. The Applicant contends that he was not aware of the proceedings herein relating to the suit property in which he has a title; that he only became aware of the proceedings recently and that his joinder in the case will assist the Court to effectively and effectually determine the dispute in issue. The Applicant annexed a copy of deed plan and certificate of title in respect of the suit property. The deed plan is dated 14th September, 2017 and the certificate of title is dated 9th April, 2018.

3. The Applicant further contends that he learnt that there are other three parties who are claiming the suit property which is subject of two suits which have been consolidated. He argues that the deed plan which was issued in his name is the one which is authentic and therefore his joinder in this case is necessary for the Court to resolve the dispute herein.

4. The Applicant's application is opposed by the Plaintiff/Respondent in ELC 816 of 2012 through grounds of opposition dated 31st October, 2018 and filed in Court on 1st November, 2018. The Plaintiff/Respondent contends that the Applicant's application is devoid of merit and is only intended to delay and or obstruct the course of justice; that the Applicant has no legitimate claim over the suit property; that the Applicant is trying to sanitize a glaring illegality or fraud and that if the application was to be allowed, it would amount to a breach of the Court's duty under Sections 1A and 1B of the Civil Procedure Act Cap 21 Laws of Kenya.

5. The Applicant's application is also opposed by the 3rd Defendant/Respondent through ground of opposition dated 23rd November, 2018 and filed in Court on 26th November, 2018. The 3rd Respondent contends that the application is frivolous and is only intended to delay the finalization of this case; that the Civil Procedure Rules do not provide for joinder of an Interested Party; that the joinder of the Applicant will not assist the Court in determining the issues in controversy; that the Applicant has not produced valid documents to warrant his joinder in the suit and that the documents which the Applicant has exhibited in support of his application were obtained contrary to Court orders which had restrained the Chief Land Registrar not to process or issue any other grants until the dispute herein is resolved.

6. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the Applicant has shown grounds to warrant his joinder in these proceedings. Before this issue is determined, it is important to give a brief background of the suit herein.

7. The suit property herein is being claimed by three parties. The land reference is the same but the three parties are claiming it using different deed plans. The Applicant herein is the fourth claimant of the suit property using the same land reference but a different deed plan. The dispute herein started on 10th February, 2010 when three individuals sued the Registered Trustees of Insurance Training and Education Trust through ELC 47 of 2010 claiming ownership of the suit property on grounds that they owned it pursuant to deed plan number 178158 under grant number 63594.

8. On 8th November, 2012 Rajab Ahmed Karume sued the Chief Land Registrar, the Attorney General and the Insurance Training and Education Trust through ELC Case 816 of 2012 claiming the suit property on the basis of deed plan number 278905 under grant number 130791.

9. The two suits were consolidated and an order was issued on 12th March, 2014 to the effect that the Chief Land Registrar was not to issue or register any new deed plan or register any grant until the suit was heard and determined. It is against this background that I have to determine whether the Applicant should be enjoined in these proceedings as an Interested Party.

10. Though the Civil Procedure Act does not expressly provide for joinder of Interested Parties, the Courts have routinely allowed parties into proceedings but based on certain criteria. In the case of *Trusted Society of Human Rights Alliance Vs Mumo Matemu & 5 Others [2014]eKLR* the Supreme Court held 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.”

11. Black's Law Dictionary defines an Interested Party as ***“a party who has a recognizable stake (and therefore standing) in the matter.”*** The Applicant herein has moved the Court to be enjoined in the proceedings on grounds that he has a title which was issued on 9th April, 2018. The Applicant does not state when he became aware of the proceedings herein. The hearing in respect of ELC 816 of 2012 is already concluded. Hearing in respect of ELC 47 of 2010 is going on. The case is scheduled to proceed for further hearing on 7th 8th and 9th May, 2019. There are Court orders which restrained the Chief Land Registrar from registering any new deed plans or issue any grants in this matter until the dispute is determined. These orders were granted in 2014. The Applicant herein is coming in 2018 seeking to be enjoined in the proceedings on grounds that he has a grant issued on 9th April, 2018. This grant if at all it was issued, was issued contrary to the Court orders. The grant is not even signed. The grant is *prima facie* illegal and it will not assist this Court in resolving the dispute herein. For a party to be enjoined in proceedings as an Interested Party, he or she has to demonstrate that he has a recognizable legal interest in the matter which is the subject of proceedings. In the instant case, the Applicant has no recognizable interest in the proceedings to warrant him to be enjoined in these proceedings. If the Applicant were to be enjoined in these proceedings, it will amount to allowing a party with no recognizable interest which will only delay the conclusion of the case herein and will not assist the Court in determining the issues in controversy. I therefore find no merit in the application which is hereby dismissed with costs to the Respondents.

Dated, Signed and delivered at **Nairobi** on this **10th** day of **April, 2019**.

E.O.OBAGA

JUDGE

In the presence of M/s Maimuna for Mr. Muchoki for Plaintiff and Mr. Ouma for 3rd Defendant and M/s Omesa for Mr. Otachi for proposed Interested Party.

Court Assistant- Hilda

E.O.OBAGA

JUDGE