



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 148 OF 2014

BONIFACE MUTUA MAWEU.....PLAINTIFF

VERSUS

JOSEPH MWANIA MUTHAMA.....1ST DEFENDANT

PETER MWANZIA MWANIA.....2ND DEFENDANT

NDEGWA NJIRU.....INTENDED THIRD PARTY/3RD DEFENDANT

RULING

1. In the Chamber Summons dated 12th August, 2014, the 1st Defendant/Applicant is seeking for the joinder of Ndegwa Njiru in this suit as a third party.
2. The Application is supported by the Affidavit of the 1st Defendant/Applicant who has deponed that the Plaintiff's advocate, Ndegwa Njiru, has special and conflicting interest in the suit; that the said advocate has bought one acre of parcel of land known as Matungulu/ Nguluni/610 (*the suit land*) and that the said advocate should be joined in the suit as a third party.
3. In reply, the Plaintiff's advocate, Ndegwa Njiru, deponed that he is an advocate of the High Court of Kenya; that the 1st Defendant/Applicant has not established how his enjoyment in the suit will aid this court to arrive at a just determination of the dispute; that the allegations by the Applicant are not supported by any evidence and that the photos that the Defendant is relying on lack any probative value.
4. Both the intended Third Party and the 1st Defendant's advocate filed their written submissions which I have considered.
5. The only issue for determination before me is whether the Plaintiff's advocate should be enjoined in this suit as a third party. According to the 1st Defendant, the Plaintiff's advocate should be enjoined in this suit as a third party because he has purchased one (1) acre of land known as Matungulu/Nguluni/610 (*the suit property*).
6. The Civil Procedure Rules, 2010 provides for instances when the court can issue notice to a third party. Order 1 Rule 15 (1) (c) states as follows:

“15. (1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)

(c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,

he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.”

7. As was held in the case of *Yafesi Walusimbi vs. Attorney General of Uganda (1959) EA 223*, in order to join a third party, the subject between the third party and the Defendant must be the same as the subject matter between the Plaintiff and the Defendant and the original cause of action must be the same.

8. Although the 1st Defendant/Applicant has alleged that the intended third party purchased a portion of the suit property, he has not adduced any evidence to that effect. Indeed, neither a Sale Agreement nor a copy of the title has been exhibited to show that the intended third party has a registrable or known interest in the suit land.

9. The mere fact that the Plaintiff's advocate was seen on the suit property does not prove that he purchased a portion thereof. That is pure speculation on the part of the 1st Defendant.

10. In the absence of evidence showing that the intended third party purchased one (1) acre of land known as Matungulu/Nguluni/610 or at all, I find the Application dated 12th August, 2014 to be unmeritorious. The Application is therefore dismissed with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF MAY, 2019.

O.A. ANGOTE

JUDGE