



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 155 OF 2018

MARGARET NYAKAIRO PETER.....PLAINTIFF

VERSUS

JOSEPH KAMAU KURIA1ST DEFENDANT

DUNCAN MWANGI KARIEGA....2ND DEFENDANT

RULING

(Application seeking joinder of person as additional defendants; application being made by existing defendant; applicant stating that he purchased land from the three proposed co-defendants and contests sale to the plaintiff; plaintiff not having any claim against the proposed co-defendants; since plaintiff has no claim against them, it would be superfluous to order that they be enjoined as co-defendants; applicant to consider filing third party proceedings or a counterclaim with the said persons as defendants; application dismissed).

1. The application before me is that dated 7 August 2018 filed by the defendants pursuant to the provisions of Order 1 Rule 10 (4) of the Civil Procedure Rules, 2010. The application seeks orders that three persons, namely, Prisca Chepkonga, Mathew Kiplangat Chesaro, and Robert K. Chebon, be enjoined as defendants in this case. It further seeks orders for amendment of the pleadings to reflect the additional parties.

2. To put matters into context, this suit was commenced through a plaint which was filed on 24 April 2018. The plaintiff sued two persons, namely Joseph Kamau Kuria, and Duncan Mwangi Karega. In her plaint, the plaintiff averred that she purchased the land parcel Nakuru Municipality Block 29/1221, from Prisca Chepkonga, and she thereafter became registered as proprietor. She sued the defendants for occupying her plot and in her suit she has asked that the defendants be evicted from her land.

3. In their joint statement of defence, the defendants conceded that Prisca Chepkonga was the registered proprietor of a land parcel Nakuru Municipality Block 29/301. It is averred that she subdivided the same into smaller plots and appointed Mathew Kiplangat Chebon and Robert Chebon Kiptoon as her agents for purposes of selling the plots. They contend that they purchased plots arising from the subdivision and executed sale agreements with the agents of the owner of the land. They have denied that they are in occupation of land owned by the plaintiff and assert that they occupy land which they purchased from Prisca. In her reply to defence, the plaintiff stated that the agency given to Mathew Kiplangat Chesaro and Robert Chebon Kiptoon was revoked by Prisca after she realized that they were taking money from prospective buyers but not surrendering the same to her. She then assumed full responsibility to sell her land parcel Nakuru Municipality Block 29/301 out of which the plaintiff purchased the parcel No. 1221, which I believe is one of the subdivisions.

4. In the supporting affidavit to the subject application, sworn by Joseph Kamau Kuria, he has deposed inter alia that he had an agreement with Mathew Kiplangat Chesaro and Robert Chebon Kiptoon for purchase of a portion of the land parcel No. 301. The two represented that they had purchased the land from Prisca. After the purchase, he erected a church on the property and has averred that neither Prisca nor the plaintiff raised any issue. It is her view that Prisca, Mathew and Robert, are necessary parties to the suit. He has averred that in the event that Prisca sold the land to the plaintiff, then he may lodge a claim against her as co-defendant.

5. Although the application is not opposed, I am not inclined to grant the same.

6. From the positions of the parties, the plaintiff does not seem to have any issue with Prisca Chepkonga, nor with Mathew Kiplangat Chesaro, nor with Robert Chebon Kiptoon, the persons whom the applicant wants to be enjoined as defendants. Her position is that she properly purchased land from Prisca, and the defendants are occupying the same. She has not raised any issue about the purchase. I therefore do not see, why the plaintiff ought to be directed to sue Prisca, Mathew and Robert if she has no claim against them.

7. The person who has a grievance with Prisca, Mathew and Robert, is the applicant, as he claims to have properly purchased land from

them. If this is the position taken by the applicant, then what he needs to do is to file a Third Party Notice against them, pursuant to the provisions of Order 1 Rule 15 which provides as follows :-

Notice to third and subsequent parties [Order 1, rule 15.]

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

(a) that he is entitled to contribution or indemnity; or

(b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

(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.

8. In my opinion, it is the above provisions which ought to apply. Alternatively, the applicant can consider amending his defence to introduce a counterclaim with the said Prisca, Mathew and Robert, as defendants in it. 9. It would be superfluous to ask that the three people be co-defendants in the suit, for the plaintiff has not laid any claim against them.

10. For the above reasons, this application is dismissed but I make no orders as to costs since the plaintiff did not deem it fit to oppose it.

11. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 12th day of June 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Ms. Nancy Njoroge for the plaintiff.

Ms. Kinuthia holding brief for Mr. Githui for the defendants/applicants.

Court Assistants: - Janepher Nelima/Patrick Kemboi

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU