



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC NO.80 OF 2017

FEIZAL SADRUDDIN S. NURANI.....PLAINTIFF/RESPONDENT

VERSUS

ISAAC KIBET LABOSO.....DEFENDANT/RESPONDENT

AND

KIPYEGO SAWE.....INTENDED INTERESTED PARTY/APPLICANT

RULING

This is in respect of an application dated 19th February, 2019 by Mr. Kipyego Sawe the applicant who seeks to be enjoined in this suit as an interested party. Counsel agreed to canvass the application by way of written submissions.

APPLICANT'S WRITTEN SUBMISSIONS

Counsel submitted that the intended interested party / applicant is a necessary party to this suit with an identifiable stake and a legal interest in the subject matter being Land Parcel. No . Pioneer/ Langas Block 1 (Malel) 195 which was sold to him by the defendant herein Isaac Kibet Laboso who is the registered owner vide a sale agreement dated 11th June, 2010.

Counsel further submitted that the applicant came to realize that the parcel of land being claimed by the plaintiff against the defendant when he was following up on effecting transfer of Land Parcel No. Pioneer/ Langas Block 1 (Malel) 195 from the defendant to himself. He therefore submitted that it would be appropriate and in the interest of justice to enjoin the applicant to this suit to avoid multiplicity of suits and enable the court to determine all matters concerning the subject matter. Further that the outcome of this suit will affect the applicant and he stands to suffer a great loss and prejudice.

PLAINTIFF/RESPONDENT'S SUBMISSIONS

Counsel for the plaintiff filed submissions and stated that the application lacks merit as the parcel of land that the applicant claims to have bought from the defendant is distinct from the parcel that is the subject matter of this case. Counsel submitted that the Plaintiff/Respondent is therefore a stranger to the property claimed by the Applicant and has not laid any claim against the said property namely PIONEER/LANGAS BLOCK 1 (MALEL)/195.

It was Counsel's further submission that the parcel of land in dispute in this suit is PIONEER/LANGAS BLOCK 1/642 as per the plaint dated 20th February, 2017 and not PIONEER/LANGAS BLOCK 1 (MALEL) 195 as claimed by the Applicant and therefore the application dated 19th February, 2019 has no basis, amounts to an abuse of the court process and the same should be dismissed with costs to the Plaintiff/Respondent. That the Applicant herein does not have any identifiable stake or interest in the suit land and that he can only raise his claim by filing a separate suit against the Defendant and not to be enjoined as an interested party in this suit.

ANALYSIS AND DETERMINATION

The issues for determination in an application for enjoining an interested party to a suit are as to whether the applicant has established that he or she has a legal interest and an identifiable stake in a suit. The issue of joinder of parties is as provided for under Order 1 rule 10(2) of the Civil Procedure Rules which states as follows:

“2. 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.”

This order gives the court powers to enjoin or remove a party who has been improperly enjoined either on its own motion or by an application by a party. This is for purposes of enabling the court to effectually and completely adjudicate the matters before it. This does not mean that any party can just walk into a suit without establishing the nexus between it with the subject matter as if this is allowed then it would make litigation very cumbersome with busybodies who have the sole aim of scuttling the court process being made part of the process.

The question that we must answer is whether the applicant has established that he has a legal interest or identifiable stake in this suit. The applicant has annexed a sale agreement dated 11th June 2010 between him and the defendant for sale of land Parcel No. **PIONEER/LANGAS BLOCK 1 (MALEL) 195** and the suit parcel is **PIONEER/LANGAS BLOCK 1/642** which is evidenced by the annexed certificate of lease dated 19th October 2016 registered in the plaintiff's name. There is no evidence that it is one and the same title or parcel of land.

The applicant can pursue the defendant in a separate suit and the parcel of land that he is claiming is not the one in court. This will not amount to multiplicity of suits as claimed by the applicant. Failure to enjoin the applicant in this suit will not prejudice him in any way as he still has recourse to ask for the parcel that he bought from the defendant.

I have considered the submissions by Counsel and the relevant authorities cited and I come to the conclusion that the application is not merited and is therefore dismissed with costs to the plaintiff.

Dated and delivered at Eldoret on this 23rd day of July, 2019.

M.A. ODENY

JUDGE

RULING READ IN OPEN COURT in the presence of Mr.Juma holding brief for Ngugi Mbugua for Defendant and Mrs. Munyage for proposed IP

Mr.Mwelem – Court Assistant