



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 209 OF 2017

PIDDAN MUSAU KATULA

CHRISTINE MWANGI

(Suing as legal representatives and administrators of the Estate of

STEPHEN KATULA MUYENDI).....PLAINTIFFS

VERSUS

SILAS MUSAMBAYI KHAEMBA *(Being sued on his own behalf*

and on behalf of 41 others).....DEFENDANTS

AND

MBUKONI HOLDINGS LTD.....INTERESTED PARTY/APPLICANT

RULING

1. In the Notice of Motion dated 15th February, 2018, the Intended Interested Party/Applicant has sought for the following orders:

a. That Mbukoni Holdings Limited be enjoined in this suit as Defendant/Interested Party.

b. That the costs of this Application be provided for.

2. The Application is supported by the Affidavit of the Applicant's Director who has deponed that the Applicant is in the business of buying and selling land; that parcel of land known as Mavoko Town Block 3/2111 (*the suit land*) was purchased by the Applicant from one Reuben Katula and that the Applicant sub-divided the land into several plots and sold the same to third parties, including the Defendants herein.

3. According to the Applicant, it is imperative that the Applicant be joined to this suit to enable the court to effectively adjudicate over the matter.

4. In response, the 1st Plaintiff deponed that the said Reuben Katula had no authority or letters of administration to sell the suit land to the Intended Interested Party; that the Applicant failed to assist the police in their investigations; that the said Reuben had no title to pass to the Applicant and that the inclusion of the Applicant in this matter will only delay the hearing and finalization of the matter.

5. On his part, the 1st Defendant deponed that the Defendants bought portions of their land from the Applicant; that the Applicant bought the land from Reuben Katula and that the Applicant is an essential party in these proceedings.

6. In his submissions, the Interested Party's/Applicant's advocate submitted that the Interested Party purchased the suit land from the Estate of Stephen Katula Muyendi; that it is the Applicant who sold the land to the Defendants and that the Applicant has a legitimate interest in the proceedings.

7. The Applicant's counsel submitted that Article 48 of the Constitution allows access to justice and that an Interested Party is a person who has an identifiable stake or interest in a claim.

8. In his submissions, the Plaintiffs' advocate submitted that the Applicant having sold the suit premises to the Defendants, it has no known interest in the suit land; that the Defendants can only call the Applicant's representative as a witness in the matter and that the Applicant does not have any *locus standi* in these proceedings.

9. The suit by the Plaintiffs is against 42 Defendants. In the Plaint, the Plaintiffs have averred that they are the administrators of the Estate of the late Stephen Katula Muyendi; that the said Katula owned land known as Mavoko Town Block 3/2111 (*the suit land*) and that in the year 2015, they discovered that the Defendants had trespassed on the suit land. The Plaintiffs are seeking for the eviction of the Defendants from the suit land.

10. In their Defence, the Defendants have averred that they legally bought the suit premises from the Vendor, Mbukoni Company Limited, in the year 2005 and that they have lived on the land since then. The Interested Party's Director has deponed that indeed it is the Interested Party/Applicant that sold the suit land to the Defendants, having purchased the same from one Reuben Katula.

11. Order 1 Rule 10(2) of the Civil Procedure Rules provides 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.”

12. The Defendants in this matter purchased their respective portions of the suit land from the Applicant, who is not a party to this suit. Indeed, the Defendants' case will fall or stand on the validity or otherwise of the Applicant's purchase of the suit land from one Reuben Katula.

13. Having sold the suit land to the Defendants, the Applicant will have to lead evidence to show how it acquired the suit land, and whether it had a good title to pass to the Defendants. In the circumstances, the Applicant is a necessary party in these proceedings. Indeed, the inclusion of the Applicant as an Interested Party in this matter will enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit, including the question of whether the Interested Party had a good title in respect of the suit land.

14. For those reasons, I allow the Application dated 15th February, 2018 as follows:

a. Mbukoni Holdings Limited be and is hereby enjoined in this suit as a Defendant.

b. The said Mbukoni Holdings to file its Defence within twenty one (21) days of the date of this Ruling.

c. Each party to bear his/its own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19TH DAY OF JULY, 2019.

O.A. ANGOTE

JUDGE