



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC NO.5 OF 2019(OS)

HAWA ABDILAH.....PLAINTIFF

VERSUS

ISAAC NDEGE ARAP CHUMBO (Sued as the Legal Administrators of the

Estate of MALAKWEN A.CHENGO (Deceased).....DEFENDANT

AND

PETER TANUI.....INTENDED INTERESTED PARTY

DAVID MELLY.....INTENDED INTERESTED PARTY

BANARD KEMBOI.....INTENDED INTERESTED PARTY

SAMMY KEMBOI.....INTENDED INTERESTED PARTY

RULING

This ruling is in respect of an application dated 26th March 2019 brought by the interested parties for orders that the applicants herein DAVID MELLY, BENARD KEMBOI, PETER TANUI, SAMMY KEMBOI be enjoined as interested parties on the grounds that they are in occupation of 0.9 acres of LR NO. NANDI/MOSOMBOR/444 and that the outcome of the proceedings will directly affect them.

Counsel for the interested parties argued the application and submitted that the interested parties are in occupation of 0.9 acres of the suit land having purchased the same from the plaintiff as evidenced by the annexed sale agreements. It was further Counsel's submission that it is the plaintiff who brought the interested parties to the suit land and any orders in this suit would directly affect them in one way or another.

Counsel further submitted that the applicants will be witnesses in the case to show that the plaintiff sold to them land and also support the plaintiff's case. He therefore urged the court to allow the application as prayed as the plaintiff will not suffer any prejudice if the applicants are enjoined in the suit.

Mr. Magare Counsel for the plaintiff opposed the application on the grounds that the suit is an Originating Summons for adverse possession which does not allow other issues to be determined other than the issues in the suit. That if the applicants have a claim then the same lies elsewhere and not in this particular suit.

It was Counsel's submission that that the plaintiff does not need the support of the interested parties to prove her case. Further that the defendant has already admitted the plaintiff's claim and that the parties agreed to file submissions which have been duly filed.

Mr. Magare submitted that the applicants are claiming through the plaintiff who has to perfect her title first. He therefore urged the court to dismiss the application as it has no merit.

Analysis and determination

In an application for enjoining an interested party, a party must establish that he or she has legal interest or an identifiable stake in the proceedings before the court. 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 means that the court can at any stage of the proceedings either on its own motion or through an application enjoin a party whose presence will enable the court to adjudicate the matter completely and settle the matters in question. The court also has powers to remove parties that have been wrongly enjoined in a suit. This order however does not define who an interested party is even though the said order is used for purposes of joining parties to a suit.

In the case of **Judicial Service Commission – Vs – Speaker of the National Assembly & Another (2013) eKLR**, the court defined an interested party as:

From the foregoing it is clear that an interested party as opposed to an amicus curiae or a friend of the court may not be wholly indifferent to the outcome of the proceedings in question. He is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non partisan as he is likely to urge the court to make a determination favourable to his stake in the proceedings.”

The applicants herein claim that they bought land from the plaintiff and that they have sale agreements for 0.9 acres of the suit land. They further claim that they are in occupation having brought into occupation of the suit land by the plaintiff. The applicants also submit that they will be witnesses to show that the plaintiff sold to them the land.

Enjoining an interested party into a suit is meant to help the court determine all the issues at stake which involves all the parties that have a legal interest and identifiable stake in the suit. It is not a matter of allowing anyone to walk into a suit and claim certain reliefs which can be handled separately. Bringing in strangers to a suit ends up complicating matters in terms of the order of hearing the reliefs sought if they are not even remotely associated with the claim.

Having said that I find that the applicants have not established that they have a legal and identifiable interest in this case. They have admitted in their submissions that they would want to be witnesses in this case to assist the plaintiff prove her case. The plaintiff as a claimant would be at liberty to choose who to include in her case as witnesses and the court cannot compel her to take the applicants. The case before the court is an Originating Summons for adverse possession which has specific issues for determination.

It should also be noted that Originating Summons is not suitable for contentious issues. I therefore find that enjoining the applicants in this case will not help the court to effectually and completely deal with this matter. Their action would lie elsewhere either by filing another case or awaiting the determination of this case. From their averments it seems that they are appendages of the plaintiff and either way their claim will be dependent on the outcome of this case. Enjoining them will not enhance or change their ownership claim as purported purchasers. This application is therefore dismissed with costs to the plaintiff.

Dated and delivered at Eldoret on this 16th day of July, 2019.

M.A. ODENY

JUDGE

RULING READ IN OPEN COURT in the presence of Mr. Magare for Plaintiff and in the absence of S.K. Kitur for Defendants and Sagasi for Applicants.

Mr. Mwelem – Court Assistant