



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 376 OF 2012

JOSEPH NJOROGI KANG'ARUA.....PLANTIFF

VERSUS

HARRISON WAGACHA MUNYUI.....DEFENDANT

JAMES NDUNGU IKERE.....1ST INTERESTED PARTY

RULING

1. This is the notice of motion dated 21st November 2018 brought under order 40 rule 1, 2 and 3 of the Civil Procedure Rules, Section 1A, 1B, 3A and 63 (e) of the Civil Procedure Rules 2010 and all other enabling provisions of the law.
2. It seeks orders:-
 1. *Spent.*
 2. *Spent.*
 3. *Spent.*
 4. *That, the 1st interested party's application should be nullified and be expunged from this case citing fraudulent activities.*
 5. *That, this honourable court should involve the directorate of criminal investigation (DCI) to investigate the criminal activities perpetrated by both the defendant in cohort with the 1st interested party.*
 6. *Costs be provided for.*
7. The application is supported by the grounds on the face of the application and are set out in paragraphs 1 to 11.
8. The application is supported by the affidavit of Joseph Njoroge Kang'arua, the plaintiff/applicant herein sworn on the 21st November 2018.
9. The application is opposed. There is a replying affidavit sworn by Harrison Wagacha Munyui, the defendant/respondent herein sworn on the 24th January 2019. There is also a replying affidavit sworn by James Ndungu Ikeri the interested party herein sworn on the 27th March 2019.
10. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the replying affidavits, the annexures and the oral submissions. The issue for determination is whether this application is merited.
11. I have gone through the court record and note that pursuant to a notice of motion dated 26th November 2013 the parties entered into a consent which consent enabled James Ndungu Ikeri and the Land Registrar Kiambu to be enjoined as interested parties in these proceedings. The parties also agreed to preserve the suit property and consequently, a temporary injunction was issued restraining the plaintiff from selling, dealing, charging, disposing off or in any manner interfering with the suit property.

12. I also note from the court record that the orders issued on 20th November 2018 were granted after due consideration of the facts and were not obtained through fraud, deceit, coercion or threat by or against any party.

13. I have given due consideration to the replying affidavit sworn by Harrison Wagacha Manyui, the defendant herein. He is the one who sold the portion of land to the plaintiff and the interested party. He confirms that there are errors in the title deed issued to the plaintiff with respect to the acreage.

14. The issues raised in the application regarding alleged fraud will be determined at the main hearing where all parties will be heard on merit.

15. I find that the application is meant to delay this case further. I find no merit in it and the same is dismissed. The costs do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 26th day of September 2019

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Advocate for the 1st Interested Party

.....Court Assistant