



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELC NO. 67 OF 2018

MUGUMOINI FARMERS COMPANY LIMITED.....PLAINTIFF /RESPONDENT

VS

INSHWIL BUILDERS & ENGINEERS LIMITED.....DEFENDANT/RESPONDENT

AND

EPHRAIM WAITHAKA RUITHA.....1ST PROPOSED INTERESTED PARTY/APPLICANT

CHARLES WANGONDU SAMSON.....2ND PROPOSED INTERESTED PARTY/APPLICANT

RULING

1. The Applicants filed a Notice of Motion dated 21/5/19 seeking leave to be enjoined in the suit as interested parties.
2. The application is based on inter alia; that the Applicants are registered owners of LR KAKUZI/KIRIMIRI/BLOCK 7/250 and KAKUZI/KIRIMIRI/BLOCK 7/382 (part of the suit lands in this case); they are purchasers for value for the said suit lands; any orders issued in respect to the suit land is likely to affect them adversely hence the prejudice and irreparable loss that will be visited on them if they are not joined in the suit; they enjoyment is necessary for the complete and effectual adjudication of the suit ; rules of natural justice dictate that no person should be condemned unheard.
3. The application is further supported by the affidavit of Charles Wangondu Samson sworn on the 21/5/19 wherein he deponed that he is the registered owner of KAKUZI/KIRIMIRI/BLOCK 7/250 and the 2nd Applicant is the registered owner of KAKUZI/KIRIMIRI/BLOCK 7/382 having acquired on 19/3/05 from the Defendant through a transfer. In further support of his motion he attached a copy of the title for KAKUZI/KIRIMIRI/BLOCK 7/250 in his name.
4. The application was opposed by the Plaintiff/Respondent and through the replying affidavit sworn by Joseph Kamande Ngone stated that there is no privity of contract between the Plaintiff and the 2nd Applicant. That the 2nd Applicant purported to purchase the suit land from one Francis Ngone who had no legitimate ownership in the said suit land. That the said Francis Ngone purported to personally sell the original suit land to the Defendant for which he received payment. That the Defendant knowing that the transaction was fraudulent proceeded to subdivide the main suit and sell parcel KAKUZI/KIRIMIRI/BLOCK 7/382 to the 1st Applicant. That both Applicants are known to the Defendant and the 2nd Applicant was aware of the prohibitory orders preventing the sale of the original suit land. Further that he believes that there has always been collusion between the Defendant and the Applicants to defraud the Plaintiff of its suit land and this application is geared at further delay of the hearing and eventual denial of justice to the Plaintiff.
5. The 2nd Applicant in his replying affidavit sworn on the 23/7/19 deponed that he was advised by his Advocates on record that the Plaintiff has obtained injunctive orders against parcel KAKUZI/KIRIMIRI/BLOCK 7/250 and KAKUZI/KIRIMIRI/BLOCK 7/382 respectively which orders directly affect the proprietary rights of the Applicants and hence the reason they should be enjoined in the suit to protect their interests. Further the 2nd Applicant avers that the issues raised by the Respondent in his replying affidavit in respect to ownership of the said parcels can only be canvassed in trial.
6. The Defendant did not oppose the application.
7. Parties elected to canvass the application by way of written submissions which I have read and considered.
8. The key issue for determination is whether the Applicants should be enjoined in the suit.

9. The provisions of Order I Rule 10(2) of the Civil Procedure Rules, 2010 states as follows;

“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” (emphasis is mine).

10. Under Order 1 Rule 10(2) a person may be enjoined to a case in two instances when he ought to have been joined as a Plaintiff or Defendant and is not i.e. necessary party and were without his presence the question in the suit cannot be completely decided.

11. The threshold for joinder of parties was set in the Civil Appeal case of **Francis Kariuki Muruatetu & Anor. Vs Republic & 5 Others (2016) eKLR** where the Court held that the Applicant must demonstrate the personal interest that she has in the matter by laying sufficient grounds before the Court; the prejudice she would suffer if she is not enjoined as interested party; set out the case that she intends to make before the Court and demonstrate the relevance of the evidence being proffered to the Court in determining the issue in controversy.

12. In Kenya, Courts have taken a liberal application to joinder of parties. In the case of **Kingori vs. Chege (2002) 2 KLR 243, Warsame J** had this to say;

“ In my view in deciding an application for joinder, the Court must exercise a liberal approach so as not to shut out a genuine litigant who is effectively interested or is bound by the outcome of the suit, however the Court must guard against the frivolous or vexatious litigant whose sole motivation is to complicate and confuse issues that are before Court for determination”.

13. **Black’s Law Dictionary 9th Edition at page 1232** defines an interested party as;

“a party who has a recognizable stake (and therefore standing) in a matter”.

14. In determining whether or not a person is indispensable or a necessary party, the Court must carefully examine the facts of the case, the relief sought and the nature and extent of the absent parties interest in the controversy raised in the suit.

15. In this case the Applicants have averred that both have proprietary interest in the suit lands LR KAKUZI/KIRIMIRI/BLOCK 7/250 and KAKUZI/KIRIMIRI/BLOCK 7/382 respectively. The 2nd Defendant has annexed a copy of the title deed in his name in respect to parcel LR KAKUZI/KIRIMIRI/BLOCK 7/250. The 1st Applicant though averred that he is registered as owner of LR KAKUZI/KIRIMIRI/BLOCK 7/382 did not attach any evidentiary document in form of a certified copy of the title, green card or official search to support his alleged ownership. I have seen a copy of the transfer document between Defendant and the 1st Applicant which was registered on the 25/3/15. On the basis of the same I allow the 1st Applicant to be enjoined notwithstanding that he has not presented a copy of a title in support of his interest in the suit land.

16. The Plaintiff’s suit is premised on fraud and fraudulent acquisition of the suit land and its subdivisions by the Defendant. To the extent that the Applicants are prima facie owners of the suit land No LR KAKUZI/KIRIMIRI/BLOCK 7/250 and KAKUZI/KIRIMIRI/BLOCK 7/382, this Court agrees with the Applicants that they ought to be joined so as to enable the Court completely and effectual determine the issues in controversy.

17. In the end the application succeeds with the consequence that the Applicants are enjoined as Defendants to the suit.

18. Costs shall be in the cause.

19. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG’A THIS 23RD DAY OF SEPTEMBER, 2019

J G KEMEI

JUDGE

Delivered in open Court in the presence of:

Mrs Beaco for the Plaintiff/ 1st Respondent

Ndurumo for the Defendant/2nd Respondent

Malenya HB for Wambugu Mrs for the 1st and 2nd Proposed Interested Parties/Applicants

Irene and Njeri, Court Assistants