



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

MISCELLANEOUS APPLICATION NO. 23 OF 2019

PHILIP NGETHE.....APPLICANT

VERSUS

KENNETH MWANGI.....1ST RESPONDENT

COUNTY COUNCIL OF KAJIADO.....2ND RESPONDENT

LAND REGISTRAR (MINISTRY OF LANDS).....3RD RESPONDENT

RULING

What is before me for determination is the Chamber Summons application dated the 28th May, 2019 brought pursuant to Order 1 Rule 10 and Order 50 of the Civil Procedure Rules. The Applicant seeks the following orders:

- a) Spent.
- b) The Honourable Court do grant leave to allow the Land Registrar, Ministry of Lands, Republic of Kenya be enjoined as the 3rd Respondent.
- c) In consequence thereon, this Court do amend the Order dated 3rd April, 2019 to reflect the same in particular prayer No. 3 to read as:

‘... That this Court do hereby issue an Order directing the 3rd Respondent, Land Registrar to register the Applicant as the owner of title known as L.R No. 25699.’

The application is premised on the summarized grounds that the Court had issued an Order dated 3rd April, 2019 directing the Land Registrar to revoke the title LR No. 25699 also known as plot No. 316 R hereinafter referred to as the suit land and to register the Applicant as the owner of the said plot. The Order No. 3 dated 3rd April, 2019 is ambiguous and should be amended to specifically mention the Land Registrar as the one registering the title No. 25699 in the Applicant’s name. As a result, the Applicant prays that the Court do enjoin the Land Registrar as the 3rd Respondent to enable them execute the order.

The application is supported by the affidavit of PHILIP NGETHE, the Applicant herein who confirms being the owner of land parcel known as LR No. 25699. He explains that the Court issued an Order dated the 3rd April, 2019 but upon presentation of the said Order to the Land Registry, it was referred back for clarification by the Land Registrar on Order No. 3 as the 2nd Respondent has no mandate to register and issue Title Deeds. He reiterates that the Court has power to enjoin the Land Registrar as the 3rd Respondent and amend the Order dated the 3rd April, 2019.

The Respondents despite having been duly served failed to file a response to the application.

Analysis and Determination

Upon consideration of the Chamber Summons dated 28th May, 2019 including the supporting affidavit as well as the annexures thereon, the issues for determination is whether the Land Registrar should be enjoined in the proceedings herein and the Order dated the 3rd April, 2019 to be amended.

Order 1 Rule 10 (1) and (2) of the Civil Procedure Rules provides that: ‘(1) **Where a suit has been instituted in the name of the wrong**

persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit. (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.'

In the case of *Joseph Njau Kingori vs. Robert Maina Chege & 3 others* [2002] eKLR Nambuye J as she then was, provided the guiding principles to be adhered to when an intending party seeks to be enjoined in a suit and stated as follows: '*When the above principles are applied to the facts of these applications it is clear that the guiding principles when an intending party is to be joined are as follows: (1) He must be a necessary party; (2) He must be a proper party; (3) In the case of the Defendant there must be a relief flowing from that Defendant to the Plaintiff; (4) The ultimate order or decree cannot be enforced without his presence in the matter; (5) His presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit.*'

In the current scenario, the Applicant seeks for the inclusion of the Land Registrar in these proceedings. I note the Applicant was the successful party in the Court of Appeal Civil Application No. 177 of 2016 relating to a dispute over ownership of the suit land. The Applicant seeks the addition of the Land Registrar to enable it execute the Order of the Court. I note the presence of the Land Registrar in these proceedings is necessary to enable the Court effectively and completely settle all the questions in the dispute. Since the application is unopposed and in relying on the legal provisions as well as associating with the authority cited above, I find the instant application merited and will allow it. I will proceed to make the following final orders:

- a) The Land Registrar Kajiado be and is hereby enjoined as the 3rd Respondent.
- b) The Order of this Court granted on 9th April, 2019 be and is hereby amended to read: '.... That this Court do hereby issue an Order directing the 3rd Respondent, Land Registrar to register the Applicant as the owner of title known as L.R No. 25699.'
- c) The costs will be in the cause

Dated and delivered at Kajiado this 18th Day of September, 2019.

CHRISTINE OCHIENG

JUDGE