



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC SUIT NO.414 OF 2010

CONSOLIDATED WITH ELC NO.415 OF 2010

ALICE WANGU MWANIKI & ANOTHER.....PLAINTIFFS

VERSUS

MILELE VENTURES LIMITED.....DEFENDANTS

AND

SAMUEL M. NJAU & 22 OTHERS.....INTERESTED PARTY/APPLICANT

RULING

1. This is a Ruling in respect of two applications. The first application is dated 14/9/2018 . It is brought by Samuel Mwangi Njau and 22 others who seek to be enjoined in these proceedings as interested parties. The applicants seek the following orders:-

1. Spent

2. That the Honourable Court be pleased to grant orders granting leave that the 1st to the 70th interested parties be enjoyed in this suit as interested parties or as necessary parties.

3. That the Honourable Court be pleased to grant temporary orders staying further execution of the judgement and decree of the court delivered on 25th February 2014 in so far as the same is being executed against the 1st to the 70th interested parties by the 1st and 2nd respondents pending inter-parties hearing of this application.

4. That in the alternative to prayer 3 above , the honourable court be pleased to grant temporary orders staying execution of the judgement of the court delivered on 25th February 2014 in so far as the same is being executed in respect of sub-divisions of No.28318/15 that is to say,L.RNO.28318/2113,L.R NO.28318/2114, L.R NO.28318/2115, L.R NO.28318/2116, L.R NO.28318/2117, L.R NO.28318/2118, L.R NO.28318/2119, L.R NO.28318/2120, L.R NO.28318/2121, L.R NO.28318/2122, L.R NO.28318/2123, L.R NO.28318/2124, L.R NO.28318/2125, L.R NO.28318/2126, L.R NO.28318/2127, L.R NO.28318/2128, L.R NO.28318/2129, L.R NO.28318/2130, L.R NO.28318/2131, L.R NO.28318/2132, L.R NO.28318/2133, L.R NO.28318/2134, L.R NO.28318/2135, L.R NO.28318/2136, L.R NO.28318/2137, L.R NO.28318/2138, L.R NO.28318/2139, L.R NO.28318/2140, L.R NO.28318/2141, L.R NO.28318/2142, L.R NO.28318/2143, L.R NO.28318/2144, L.R NO.28318/2145, L.R NO.28318/2146, L.R NO.28318/2147, L.R NO.28318/2148, L.R NO.28318/2149, L.R NO.28318/2150, L.R NO.28318/2151, L.R NO.28318/2152, L.R NO.28318/2153, L.R NO.28318/2154, L.R NO.28318/2155, L.R NO.28318/2156, L.R NO.28318/2157, L.R NO.28318/2158, L.R NO.28318/2159, L.R NO.28318/2160, L.R NO.28318/2161, L.R NO.28318/2162, L.R NO.28318/2163, L.R NO.28318/2164, , L.R NO.28318/2165, L.R NO.28318/2166, L.R NO.28318/2167, L.R NO.28318/2168, L.R NO.28318/2169, L.R NO.28318/2170, L.R NO.28318/2171, L.R NO.28318/2172, L.R NO.28318/2173, L.R NO.28318/2174, L.R NO.28318/2175, L.R NO.28318/2176, L.R NO.28318/2177, L.R NO.28318/2178,L.R NO.28318/2178, L.R NO.28318/2179, L.R NO.28318/2180,L.R NO.28318/2181, L.R NO.28318/2182, L.R NO.28318/2183,L.R NO.28318/2184, L.R NO.28318/2185, L.R NO.28318/2186,L.R NO.28318/2187, L.R NO.28318/2188, L.R NO.28318/2189, L.R NO.28318/2190, L.R NO.28318/2191, L.R NO.28318/2192, L.R NO.28318/2193, L.R NO.28318/2194, L.R NO.28318/2195, L.R NO.28318/2196, L.R NO.28318/2197, L.R NO.28318/2198, L.R NO.28318/2199, L.R NO.28318/2200, L.R NO.28318/2201, , L.R NO.28318/2202, L.R NO.28318/2203, L.R NO.28318/2204, L.R NO.28318/2205, L.R NO.28318/2206, L.R NO.28318/2207, L.R NO.28318/2208, L.R NO.28318/2209, L.R NO.28318/2210, L.R NO.28318/2211, L.R NO.28318/2212, L.R NO.28318/2213, L.R NO.28318/2214, L.R NO.28318/2215, L.R NO.28318/2216, L.R NO.28318/2217, L.R NO.28318/2218, L.R NO.28318/2219, L.R NO.28318/2220, L.R NO.28318/2221, L.R NO.28318/2222, L.R NO.28318/2223, L.R NO.28318/2224, L.R NO.28318/2225, L.R NO.28318/2226, L.R NO.28318/2227, L.R NO.28318/2228, L.R NO.28318/2229, L.R NO.28318/2230, L.R NO.28318/2231, L.R NO.28318/2232, L.R NO.28318/2233, L.R NO.28318/2234, L.R NO.28318/2235, L.R

NO.28318/2236, L.R NO.28318/2237, L.R NO.28318/2238, L.R NO.28318/2239, L.R NO.28318/2240, L.R NO.28318/2241, L.R NO.28318/2242, the properties of the interested parties pending inter-parties hearing of the application.

5. Spent

6. That the consent order entered herein on 25th January 2011 between the plaintiffs and the defendants and all other consequent and subsequent proceedings relating only to LR No.28318/15 and consequential orders be reviewed and/or set aside.

7. That subsequent to grant of prayer 6 above, the Honourable Court be pleased to grant leave to the intended interested parties to take part in the proceedings for purposes of asserting their titles as brought out above.

8. That in the alternative to prayers 6 and 7 above, the Honourable Court be pleased to vary its judgement and direct the 3rd respondent to allocate alternative land to the 1st and 2nd respondents.

9. That the respondents do bear the costs of this application in any event.

2. The second application is dated 3/12/2018. It is brought by Paul Wambugu Gateere and Beatrice Wanjiru Gateere who seek to be enjoined in these proceedings as interested parties. The applicants seek the following orders:-

1) Spent

2) That the firm of Ochoki & Ochoki Associates (Advocates) be granted leave to come on record for the proposed interested parties i.e Paul Wambugu Gateere and Beatrice Wanjiru Gateere who are also beneficiaries and purchasers of 5 acre from LR No.28318/15 which was purchased from the Milele Ventures Limited, the defendant.

3) That the court order issued on 1st February 2018 captured the entire block of LR No.23818/15 which the plaintiff have abused by forcefully evicting the proposed interested parties who have been occupying LR No.28318/2242 for 8 years hence the proposed interested parties be allowed to file their pleading in court with a view to requesting review of the said order.

4) That costs be provided for.

3. In the year 2010, Alice Wangui Mwaniki filed a suit against Milele Venture Limited. In the same year, Agnes Wambui Kiritu filed a case against Milele Ventures Limited. The two suits were subsequently consolidated. Alice Wangui Mwaniki was claiming 10 acres from Milele Ventures whereas Agnes Wambui Kiritu was claiming 50 acres. After the suit was fully heard, Justice Gacheru found that the two plaintiffs were entitled to 5 acres and 35 acres respectively from Milele Ventures Limited.

4. The plaintiffs were aggrieved with the judgement of the court. They preferred an appeal to the Court of Appeal. The court of appeal did not find any merit in the appeal but because the judgement by Justice Gacheru was incapable of implementation, the court of appeal directed that the respective entitlements of the appellants were to be hived off from LR No.23818/15.

5. The decree holders extracted an amended decree which was in accordance with the judgement of the court of appeal and started the process of execution. It is after the execution process started that the proposed interested parties moved to court seeking to be enjoined in the proceedings as interested parties so that they could pray for further orders.

6. The applicants in the second application contend that they had purchased five acres from Milele Ventures Limited who processed subdivision and put them in possession. They contend that Alice Wangui Waniki with the assistance of hired goons and the OCS Ruiru went and evicted them. The two applicants went and filed a suit against Alice Wangui Mwaniki at Kiambu Law Courts. It is after Alice Wangui Mwaniki entered appearance and filed documents in the case that they became aware that there were two suits which had been filed in Nairobi without their knowledge.

7. The two applicants contend that they had been in occupation of their five acres which they identify as LR 28318/2242 since 2010. The two contend that they have already lodged a transfer, with the Registrar of Lands for the portion purchased. They therefore want to be admitted in these proceedings as interested parties so that they can seek further orders among them that their eviction was unlawful.

8. The applicants in the first application stated that though they are aware that it is not procedural to be enjoined in a suit after entry of judgement, their case is unique and that it is in the interest of justice that the consent entered between parties to this suit on 25/1/2011 be set aside and they be allowed to ventilate their issues. They contend that they are 70 in number and that they purchased their plots which were within LR 28318/15 in 2009. They were granted possession and put up temporary structures. In 2018 they were informed that their temporary structures were being demolished. When they inquired on what basis this was happening, they were informed that it was as a result of cases filed by Agnes Wambui Kiritu and Alice Wangui Mwaniki.

9. The applicants in the first application contend that the land was not available as at the time judgement was given in favour of the decree holders.

10. The respondents opposed the application for joinder through notice of preliminary objection filed on 4/2/2019. The respondents contend that this is a matter which has gone to the court of appeal and to allow joinder and the orders sought would amount to re-opening a concluded case which is unprocedural. The respondents also contend that the two applications are an abuse of the process of the court.

11. Though parties had been directed to put in brief submissions in respect of the two applications as well as the preliminary objection, it is only the applicants in the second application who filed their submissions. When the ruling date was reserved on 12/6/2018, the parties who had not filed their submissions were given 7 days to do so. As at the time of writing this ruling, there were no submissions and if any were filed, then they are not in the file.

12. I have carefully considered the two applications as well as the preliminary objection which is in the real sense not a preliminary objection but more of grounds of opposition. The only issue which has to be determined in this case is whether the proposed interested parties should be allowed in this suit. All parties herein agree that there is a judgement in favour of the respondents and that this matter has gone to the Court of Appeal which clarified on what property the decree holders /respondents were to have their respective acres.

13. The purpose of joinder of a party is that the party joined, should be able to safeguard his or her interests before the suit is determined. In the instant case, there is already a judgement in favour of the respondents. The respondents went to the Court of Appeal which affirmed the judgement of the Environment and Land Court save that it clarified that the 5 acres and 35 acres were to be carved from LR 28318/15. This property was about 60 acres. The first respondent had entered into an agreement with Milele Ventures Limited for the purchase of 10 acres. The second respondent had also entered into a sale agreement for the purchase of 50 acres. This basically cleared the whole of LR 28318/15. The agreements were entered into on 26/5/2009. Most of the proposed interested parties purchased their plots after the two had purchased theirs. The applicants in the second application did not produce the sale agreement. It is therefore not known when they purchased the 5 acres which they claim the respondent evicted them from.

14. The respondents were therefore aware where their respective portions were. If Milele Ventures Limited purported to sell what they had already sold, that is not the problem of the respondents. I have seen the transfers signed by Milele Ventures limited. The transfers were signed in 2017 and 2018 when already there was a decree in favour of the respondents. It will therefore not make any sense to allow the proposed interested parties into this suit at this late stage. This is a matter which has already gone to the Court of Appeal. The execution is being done in accordance to the decree with the Court of Appeal. It will therefore not be in order for this court to allow the proposed interested parties who are seeking orders to vary the judgment. This cannot happen. I therefore find that the two applications lack merit. The same are hereby dismissed with costs to the respondents.

It is so ordered.

Dated, Signed and Delivered at **Nairobi** this **31st** day of **October 2019**.

E.O .OBAGA

JUDGE

In the presence of :-

M/s Chege for Mr Muturi for 2nd Defendant, M/s Waweru for Mr Sausi for 1st and 2nd interested parties, Ms Mcharo for Mr Thuita for Defendants and Mr Masinde for M/s Nduati for Intended Interested parties.

Court Clerk : Hilda

E.O OBAGA

JUDGE