



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC NO. 100 OF 2007

SAMVO LIMITEDPLAINTIFF/APPLICANT

=VERSUS=

DELTA HAULAGE SERVICES LIMITED.....1ST DEFENDANT

CATHAM PROPERTIES LIMITED.....2ND DEFENDANT

CHRISTOPHER MUGONYE WAMAE.....1ST INTERESTED PARTY

ALEXANDER KUNGU MAINA.....2ND INTERSTED PARTY

RULING

1. This is a ruling in respect of a Notice of Motion dated 11th March 2019. The Notice of Motion is brought by the 1st and 2nd interested parties/applicants and it seeks the following orders:

1. Spent

2. Spent

3. The court be pleased to join Christopher Mugonye Wamae and Alexander Kungu Maina, the 1st and 2nd interested parties herein as defendants in these proceedings.

4. Upon joinder of the 1st and 2nd interested parties as defendants in these proceedings, leave be granted to them to file and serve their defence and counter claim, witness statements as well as list and bundle of documents within 7 days of the grant of leave.

5. The costs of this application abide the outcome of the consolidated suit.

2. The applicants had made an application to court on 25th March 2015 in which they sought to be enjoined to this suit as interested parties. Their application was made on the basis that they had sold Nairobi/Block 17/556 and 557 to **Mr Li Wen Jie** on 13th January 2013 and that therefore their presence in the suit was necessary to enable the court effectively and completely adjudicate the matter. The applicants application was allowed on 12th June 2015.

3. The applicants now want to be allowed to convert into defendants and raise their defence and counter

claim in the suit. The applicants contend that when they sought to be enjoined in the suit as interested parties, they did not get proper advise and that as interested parties they cannot articulate their case well; that they can only do so when they are defendants and that there will be non prejudice suffered by the parties as a result of their joinder as defendants.

4. The applicants application was opposed by the plaintiff/respondent based on grounds of opposition filed on 7th May 2019 and a replying affidavit sworn by counsel for plaintiff/respondent on 2nd May 2019. The plaintiff/respondent contends that the applicants' application has no foundation in law; that if the applicants were enjoined as defendants; the claim they intend to raise would be statute barred and that in any case, if there was to be any claim, then same would have been brought by Consumer Hire Purchase Limited which the applicants claim to have been defrauded. The plaintiff/respondent further argues that there is no claim against the interested parties to warrant them to be brought in as defendants.

5. The applicant's application was also opposed by the 2nd defendant/respondent through grounds of opposition filed in court on 12th April 2019. These grounds were also adopted by the 1st defendant/respondent. The defendants/respondents contend that the applicant's application does not meet the threshold for joinder as parties as there is no relief against them in the consolidated suits and that the plaintiff cannot be compelled to add persons as defendants and further that the inclusion of the applicants as parties will be prejudicial in that it will reopen the case.

6. I have carefully considered the applicants' application as well as the opposition to the same by the respondents. I have also considered the submissions by the parties herein. The only issues which emerge for determination are whether the applicants ought to be allowed into this suit as defendants and whether they should be granted leave to file their defence and raise a counter- claim.

7. When the applicants applied to be enjoined in the proceedings as interested parties, they did so on the basis that they had sold their respective interests to **Mr Li Wen Jie** who is a director and shareholder in the 2nd defendant/respondent company. Their joinder then was meant to assist the court to adjudicate the dispute before court. There is no party who was claiming any relief against them. They are now coming to court four years later seeking to convert their status to that of defendants.

8. In the application before court, the applicants seem to suggest that they still have interest in the properties which they claim to have sold in 2013. If their position is that they sold their interests to Mr Li Wen Jie, what interest do they again have which will entitle them to some relief to either of the principal parties to this suit? In Supreme Court of Kenya in the case of **Francis Karioko Muruatetu & Another - Vs- Republic & 5 Others [2016]eKLR** it was held as follows:-

“Therefore in every case, whether some parties are enjoined as interested parties or not, the issue for determination by the court will always remain the issues as presented by the principal parties. An interested party may not frame its own issues or introduce new issues for determination by court. One of the principles for admission of an interested party is that such a party must demonstrate that he or she has a stake in the matter before the court. That stake cannot take the form an altogether new issue to be introduced before the court”.

9. In the instant case, the applicants are seeking to come into this suit as defendants for them to introduce a new claim all together. This cannot be acceptable. The applicants had already sold their interest if that be true and they cannot now turn around and say that they want to mount defence and counterclaim. I find no merit in this application which is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Nairobi on this 31st day of **October 2019**

E.O.OBAGA

JUDGE

In the presence of:

M/s Chege for 2nd Defendant, Mr Owang for 1st Defendant,

Mr Ochieng for 1st and 2nd interested parties and

M/s Guya for Mr Mwenesi for the Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE