



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 1257 OF 2014 (O.S)

JOHN OTIENO & 299 OTHERS.....PLAINTIFF

=VERSUS=

1. TERESIA WAIRIMU KIRIMA &

2. ANNE WANGARI KIRIMA.....DEFENDANTS

RULING

This is a consolidated suit which comprises of six (6) suits namely, ELC No. 1257 of 2014, ELC No. 252 of 2007, ELC No. 509 of 2014, ELC No. 1496 of 2013, ELC No.1318 of 2013 and ELC No. 850 of 2014. As it is apparent, the oldest of the cases was filed in 2007 which is about 12 years ago while the latest case was filed in 2014. The dispute before the court involves about 3000 parties all with diverse claims over the parcels of land known as L.R No. 5908/8 situated in Embakasi/Ruai area, Nairobi and L.R No. 6825/2 situated in Njiru area, Nairobi (“the suit properties”). Due to the number of the parties involved and the diverse nature of their claims, it was not easy for the hearing of this suit to take off. Each time the suit would be fixed for hearing, new parties would emerge seeking to be joined in the various suits as interested parties or as plaintiffs or defendants.

On 17th March, 2015, the court gave elaborate directions aimed at fast tracking the hearing and final determination of the consolidated suits. After many false starts, the hearing of the suit commenced on 25th June, 2015. The court has so far taken the evidence of eleven (11) witnesses in total. The persons who have various claims over the suit properties have given evidence and closed their respective cases. The court is now at the stage of hearing the case for the legal representatives of the estate of Gerishon K. Kirima, deceased who is the registered owner of the suit properties. In my assessment, the court is at the tail end of the case.

The hearing of the suit was to continue on 19th September, 2019 when due to unavoidable circumstances, the court was not sitting. What is now before the court is an application brought by an entity known as East Riverside Drive Estate Society (“the applicant”) by way of Notice of Motion dated 14th June, 2019. In the application, the applicant has sought leave to be joined in ELC No. 1257 of 14 as an interested party and for the court to give such other or further orders as may be deemed appropriate. The application has been brought on the grounds that the members of the applicant had acquired portions of land comprised in the suit properties from various plaintiffs in ELC No. 1257 of 14 and as such it is necessary for the applicant to be joined in the suit to enable it protect its said members interest in the said parcels of land. The applicant has contended further that, its joinder in the suit as an interested party would prevent multiplicity suits and would enable expedient determination of this suit.

The applicant’s application is supported by the affidavit sworn by Javan Omondi Omolloh on 14th June, 2019 in which he has stated that he is the Vice Chairman of the applicant which is a society registered under the Societies Act, Chapter 108 Laws of Kenya. He has annexed to his affidavit among others, a certificate of registration of the applicant. It is indicated in the said certificate that the applicant was registered as a society on 10th October, 2017.

The application came up for hearing on 24th October, 2019. In his submissions in support of the application, Mr. Anyanzwa who appeared for the applicant relied entirely on the affidavit filed in support of the application. He submitted that it would serve the interest of justice if the applicant was allowed to join the suit as an interested party. Although the plaintiffs and the defendants in ELC No. 1257 of 2014 did not file grounds of opposition or replying affidavits in opposition to the application, the court allowed them to address the court on the application.

Mr. Ojienda advocate who appeared for the plaintiffs opposed the application on a number of grounds. He submitted that the applicant being a society could not maintain a suit in its own name but through its officials. He submitted further that the applicant had placed no evidence before the court of the alleged interest of its members in the suit properties. He submitted further that the applicant which claimed that its members had purchased parcels of land from the plaintiffs placed no evidence before the court of the alleged purchase. Finally, Mr. Ojienda submitted that the applicant had given no explanation for the delay in bringing the application.

Ms. Adunga advocate who appeared for the defendants in ELC No. 1257 of 2014 adopted the submissions by Mr. Ojienda in her submissions in opposition to the application. She submitted that the joinder of the applicant to the suit would cause a delay in the disposal of the suit. Ms. Adunga submitted further that if the applicant's members purchased land from some of the plaintiffs in the suit, their interests in the suit was already taken care of by the said plaintiffs and as such the applicant's joinder in the suit was not necessary. In a rejoinder, Mr. Anyanzwa submitted that no prejudice would be occasioned to the plaintiffs and the defendants in the suit if the application was allowed.

I have considered the application together with the affidavit filed in support thereof. I have also considered the submissions of counsels. In the case of Kingori v. Chege & 3 Others (2002) 2 KLR 243 it was held that:

“An applicant seeking to be joined in a suit must demonstrate that he is a necessary and proper party and in the case of a defendant, there must exist a relief flowing from that defendant to the plaintiff.”

As rightly pointed out by the advocates for the respondents, I am unable to appreciate the basis of the applicant's application. The applicant has claimed that its members purchased portions of land which are part of the suit properties herein and as such they should be given an opportunity to be heard in the suit. No evidence was placed before the court as to the parcels of land in question or the plaintiffs who were involved in the sale of the same. There was also no indication as to when the alleged sales took place. As I pointed out at the beginning of this ruling, the hearing of the suit is at the tail end. The applicant which was registered in 2017 after the hearing of this suit had commenced did not explain the delay in the filing of the present application. I am in agreement with the respondents that the joinder of the applicant in the suit would delay the disposal of the suit and would not assist in the expeditious disposal of the same as claimed by the applicant.

Due to the foregoing, I find no merit in the applicant's application dated 14th June, 2019. The application is dismissed with costs.

Delivered and Dated at Nairobi this 28th day of October, 2019

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

Mr. Ongaya h/b for Mr. Ojienda for the Plaintiffs/Respondent

Ms. Esami for the Defendants/Respondents

N/A for the Applicant

C. Nyokabi-Court Assistant