



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 957 OF 2017**

**EUNICE MUENI KARIUKI.....PLAINTIFF**

**VERSUS**

**GIDEON NDANYI OSIAKO AMUKO.....DEFENDANT**

**AND**

**FAST LANE DEVELOPERS LIMITED.....THIRD PARTY**

**RULING**

What is before me for determination is the Defendant's Chamber Summons application dated the 6<sup>th</sup> November, 2018 brought pursuant to Order 1 Rule 14, 15 (a) & (b) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The Defendant seeks leave to take out Third Party Notices to messrs Fast Lane Developers Limited. Further, that the question of liability between the Defendant against the Third Party be determined at the same time as the trial of this action.

The application is premised on the summarized grounds that on 9<sup>th</sup> November, 2011, the Defendant entered into a Sale Agreement with messrs Fast Lane Developers Limited wherein he purchased a piece of land known as Kajiado/ Kaputiei North/ 36690 measuring 4.05 hectares. The full purchase price was Kshs. 2 million. The Defendant sold one acre out of the 4.05 hectares to the Plaintiff herein at a consideration of Kshs. 650,000/= to enable him fund for the subdivision process once the title was in place. The transfer of the said piece of land was delayed because of a case filed in the High Court Nairobi Miscellaneous Application No. 449 of 2012 (JR) where orders were granted to reverse the survey and cancel the titles making the transfer impossible to date.

The application is supported by the affidavit of GIDEON NDANYI OSIAKO AMUKO the Defendant herein where he deposes that at the date of the purchase, he understood that Messrs. Fast Lane Developers Limited had not obtained title to the land. He explains that there was an ongoing succession process in respect to the land, being undertaken by Messrs. Njogu & Company Advocates, as the owner of the land had died. He confirms that after payment of the purchase price, he took possession as he awaited completion of the succession process. He decided to sell one acre out of the 4.05 acres to the Plaintiff herein at a consideration of Kshs. 650,000/= to enable him fund for subdivision process once the title was in place. He denies taking possession of the said land and neither has messrs Fast Lane Developers Limited refunded him, his purchase price of Kshs. 2 million. He reiterates that it is only fair that the third party be enjoined in this suit to enable the court determine the matters in issue.

The application is opposed by the Plaintiff EUNICE MUENI KARIUKI where she avers that the instant application lacks merit as the proposed third party is a stranger to the Sale Agreement dated the 14<sup>th</sup> December, 2011 between her and the Defendant. Further, neither was the Sale of land to her subject to the alleged Sale Agreement between messrs. Fast Lane Developers Limited and the Defendant. She insists her claim from the Defendant is for the refund of the purchase price she had fully paid which is admitted. She disputes that the land parcel number Kajiado/ Kaputiei North/ 36690 was owned by the third party. Further, that the Defendant has not availed evidence of the alleged Sale Agreement between him and the Third Party or proof of payment. She contends that in paragraphs 7 of the supporting affidavit, the Defendant contradicts paragraph 10 of the said affidavit where he had initially stated that he took possession of the land and later avers that he did not take possession. She reiterates that the Defendant has not demonstrated any legal action he has taken against the proposed Third Party for the past 8 years to recover the alleged money. Further, that the proposed Third Party is not a necessary party in the suit herein.

Both the Applicant and the Respondent have filed their respective submissions that I have considered.

**Analysis and Determination**

Upon consideration of the instant Chamber Summons application including the parties' affidavits and submissions, the only issue for determination is whether the proposed Third Party should be enjoined in the suit herein.

Order 1 Rule 15 (1) (a), (b) and (c) of the Civil Procedure Rules provides that:’ **(1) Where a defendant claims as against any other person not already a party to the suit (hereinafter called the third party)— (a) that he is entitled to contribution or indemnity; or (b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or (c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them,**

**he shall apply to the Court within fourteen days after the close of pleadings for leave of the Court to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.’**

In the case of **Yafesi Walusimbi -vs- Attorney General of Uganda (1959) EA 223**, the Court emphasized that:

**“In order to join a third party the subject between the third party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same.”**

Further, 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 joined 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 case, the Defendant seeks to enjoin the proposed Third Party to the suit herein since it had failed to transfer land to him after he paid the full purchase price. Further, that he sold a portion of the said land to the Plaintiff, which he is yet to transfer to her and hence forms the fulcrum of this suit. The Plaintiff has hence sought for refund of the purchase price she has paid. In my view, I find that the suit land which was the basis of the Agreement between the Defendant and the proposed Third Party is the same subject matter as the dispute between the Plaintiff and the Defendant. Based on my analysis above, I indeed find that the proposed Third Party is a necessary party to this suit as there is a relief flowing from it to the Defendant who in turn has relief flowing to the Plaintiff. Further, its presence is necessary to enable the Court to effectively and completely to adjudicate upon and settle all questions involved in the suit which involve failure of the Defendant to transfer land to the Plaintiff.

It is against the foregoing that I find the Chamber Summons application dated 6<sup>th</sup> November, 2018 merited and will allow it.

Costs will be in the cause.

I direct the Defendant to effect service of the Third Party Notice within 14 days from the date hereof.

**Dated signed and delivered in open court at Kajjado this 24<sup>th</sup> day of October, 2019.**

**CHRISTINE OCHIENG**

**JUDGE**