



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 375 OF 2017**

**NANCY WANGUI MUNGAI.....PLAINTIFF**

**VERSUS**

**ZACHARIA KIGERAH NJOROGE.....1<sup>ST</sup> DEFENDANT**

**LABAN KIMUNGU NJOROGE.....2<sup>ND</sup> DEFENDANT**

**BETHWEL NJOROGE.....3<sup>RD</sup> DEFENDANT**

**BENJAMIN KAGUNGA.....4<sup>TH</sup> DEFENDANT**

**BENJAMIN NJOROGE & SONS LTD.....5<sup>TH</sup> DEFENDANT**

**TUIYO KENYA LIMITED.....6<sup>TH</sup> DEFENDANT**

**JEREMIAH OLE MPATITO.....7<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, KAJIADO NORTH.....8<sup>TH</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....9<sup>TH</sup> DEFENDANT**

**AND**

**JOSEPH MUNYUE GICHAMBA &**

**MERCY MAGDALINE NYOKABI MUNYUE...INTENDED INTERESTED PARTIES**

**RULING**

What is before Court for determination is the Intended Interested Parties' Application dated the 9<sup>th</sup> October, 2018 brought pursuant to section 3A of the Civil Procedure Act and Order 1 Rule 8 (2) and (22) of the Civil Procedure Rules. The Applicants seek to be enjoined in these proceedings as Interested Parties. The Application is premised on the summarized grounds that the Applicants are tenants of Bethwel Muiruri Njoroge and Zacharia Kigeriah Njoroge who are 1<sup>st</sup> as well as 3<sup>rd</sup> Defendants herein hence have great interest in the suit property. The Applicants enjoinment as a party to this suit is clearly necessary to assist the Court arrive at the truth and effectually as well as completely adjudicate upon and settle all questions involved in the suit. The Applicants have invested heavily in the suit property and have great interest in this suit. The dispute herein between the parties can only be conclusively determined if the applicants are heard.

The application is supported by the affidavit of JOSEPH MUNYUE GICHAMBA where he avers that they are tenants to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants herein for a leasehold period of 6 years beginning 1<sup>st</sup> August, 2018. He contends that they are concerned about the ongoing dispute herein, which revolves around ownership of land parcel number NGONG/ NGONG/ 1/106 in which they are tenants. Further, that they entered into the lease agreement without knowledge of any dispute and commenced developmental investments on the suit property.

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants opposed the application and filed Grounds of Opposition dated the 22<sup>nd</sup> March, 2019 where they averred that the application is incompetent, mischievous and an abuse of this court. They state that the application has no merits in law and fact as the applicants are tenants of the 1<sup>st</sup> and 3<sup>rd</sup> Defendants who should not meddle in the affairs of their landlord. They claim the suit herein was filed long before the commencement of the Lease dated the 1<sup>st</sup> August, 2018 between the Applicants and the 1<sup>st</sup> & 3<sup>rd</sup> Defendants. The suit is

over dispute as to the ownership of NGONG TOWNSHIP Block 1/ 106 between the Plaintiffs and the Defendants; hence, the Applicants should not be involved in this suit. Further, the Applicants are not subject of any order or relief to be issued in this case and their presence is not necessary in the proceedings. There is no prejudice the Applicants will suffer if their intervention/ enjoinder is denied. Further, the Applicants will cause delay in prosecuting the suit and prejudice the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants right to enjoy their rightfully owned property.

The Intended Interested Parties', the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed their respective submissions that I have considered.

### **Analysis and Determination**

Upon consideration of the Notice of Motion application dated the 9<sup>th</sup> October, 2018 including the supporting affidavit, Grounds of Opposition and parties' submissions, the only issue for determination is whether the Intended Interested Parties' should be enjoined in this suit.

The applicants' submitted that they have fulfilled the criteria to be enjoined as Interested Parties' and relied on the cases of **Raila Amolo Odinga & Another V Independent Electoral and Boundaries Commission & 2 Others & Michael Wainaina Mwaura (2017) eKLR; Kenya Medical Laboratory Technicians and Technologists Board & 6 others V Attorney General & 4 others (2017) eKLR; Judicial Service Commission V Speaker of the National Assembly & Anor and Trusted Society of Human Rights Alliance V Mumo Matemu & 5 Others (2015) eKLR** to support their application for joinder.

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants opposed the application and relied on the cases of **Shirvling Supermarket Limited V Jimmy Ondicho Nyabuti & 2 Others (2018) eKLR; Trusted Society of Human Rights Alliance V Mumo Matemu & 5 Others (2015) eKLR and Francis Karoki Muruatetu & Another V Republic & 4 Others (2016) eKLR** to buttress their argument.

Order 1 Rule 10 (2) of the Civil Procedure Rules stipulates as follows:

*' (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.'*

Black's Law Dictionary, 9th Edition, and defines **'Interested Party'** as **"A party who has a recognizable stake (and therefore standing) in a matter"**.

Further, in the case of **Trusted Society of Human Rights Alliance V Mumo Matemu & 5 Others (2015) eKLR** the Court defines an interested party as follows: ***'(An) interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.'***

In associating myself with these decisions, I note the fulcrum of the suit herein revolves around ownership of the suit land herein which dispute is between the Plaintiffs and the Defendants. I note this suit was filed on 8<sup>th</sup> July, 2014 but the 1<sup>st</sup> and 3<sup>rd</sup> Defendants entered into a Leasehold with the Intended Interested Parties in August, 2018. The Intended Interested parties' contend that they have developed the suit land and has a stake in these proceedings. Since they are merely tenants holding a lease, which commenced after the filing of this suit, I do not deem their involvement necessary in these proceedings to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. Whatever prejudice they will suffer will be compensated by the 1<sup>st</sup> and 3<sup>rd</sup> Defendants who failed to inform them of the pendency of this suit while entering into a long term lease with them.

In the circumstance, I find the application dated 9<sup>th</sup> October, 2018 unmerited and will proceed to dismiss it.

Costs will be in the cause.

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

**CHRISTINE OCHIENG**

**JUDGE**

**IN THE PRESENCE OF:**

Kimeru holding brief for Nderitu for plaintiff

Nyangao for defendant

Court assistant Mpye