



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC SUIT NO. 627 OF 2013**

**MUUGU KURIA.....PLAINTIFF**

**- VERSUS -**

**CLERK KIAMBU COUNTY COUNCIL.....DEFENDANT**

**AND**

**PARMUAT FRANCIS LOOREMETTA.....1<sup>ST</sup> INTERESTED PARTY**

**JAMES GIKONYO HOHO.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

The plaintiff brought this suit on 27<sup>th</sup> May, 2013 seeking an order for the Land Registrar, Kiambu County to resolve a boundary dispute between land parcel No. Karai/Karai/352 (“the suit property”) and Karai/Karai/156 (“plot No. 156”) and an order compelling the defendant to transfer to the plaintiff the suit property on account of the fact that the plaintiff had stayed on the property since 1968. The plaintiff also sought an injunction restraining the defendant from trespassing on the suit property or allocating the same to other persons.

The defendant filed a defence on 23<sup>rd</sup> July, 2013 in which it denied the plaintiff’s claim in its entirety. The defendant averred that the plaintiff was allowed to occupy the suit property on a temporary basis and that the land was never allocated to him. The defendant averred further that it had no power to transfer the suit property to the plaintiff.

What is now before the court is an application brought by Parmuat Francis Loorematta and James Gikonyo Hoho (hereinafter referred to as “the applicants”) by way of a Notice of Motion dated 6<sup>th</sup> November, 2017 seeking leave to be joined in the suit as defendants. The application was brought on the grounds that the 1<sup>st</sup> and 2<sup>nd</sup> applicants were the registered owners of parcels of land known as Karai/Karai/1135 and Karai/Karai/1133 respectively which they acquired in 1995. The applicants averred that the said parcels of land came about following subdivision of parcel No. Karai/Karai/352 (“suit property”) which was the subject of the plaintiff’s claim in this suit.

The applicants averred that they were likely to be affected by the orders sought by the plaintiff. The applicants averred that it was necessary for them to be joined in the suit as defendants so that they could file defences to the plaintiff’s claim and be heard in the matter before any prejudicial order was made against them. The applicants annexed a number of documents to their affidavits in support of the application including, copies of the applicants’ title deeds and a copy of a letter from the County Government of Kiambu confirming that the applicants’ parcels of land were subdivisions of parcel No. Karai/Karai/352 (“suit property”) claimed by the plaintiff.

The application was opposed by the plaintiff through grounds of opposition dated 16<sup>th</sup> February, 2018. The plaintiff contended that the applicants’ application was brought late in the proceedings and that no reason had been given by the applicants to warrant the joinder sought. The plaintiff contended that the applicants’ parcels of land aforesaid had no relationship with the suit property. The plaintiff averred that the applicants’ parcels of land were non-existent and that the applicants’ application was only aimed at delaying the finalisation of the suit. The plaintiff contended that the issues raised by the applicants could not be determined in this suit.

The application was argued on 27<sup>th</sup> March, 2019. I have considered the application together with the grounds of opposition filed by the plaintiff in opposition thereto. I have also considered the oral submissions that were made before me by the advocates for the parties. Order 1 rule 10 (2) of the Civil Procedure Rules gives the court power at any stage of the proceedings to join a party to a suit as a defendant if such person ought to have been joined in the suit as such defendant or if his presence in the suit is necessary in order to enable the court to effectually and completely adjudicate and settle all matters in question in a suit. The order can be made on application by either party or by the court on its own motion.

I am satisfied that the applicants have established valid grounds for the joinder sought. The material before the court shows that the suit property claimed by the plaintiff has been subdivided into various portions which have been allocated to various people who are not before the court. The evidence before me shows that the continued existence of the suit property in the register as a whole parcel of land may be a mistake as the register should have been closed upon the subdivision of the property as aforesaid. There is no doubt therefore that the applicants who are some of the beneficiaries of the said subdivision of the suit property would be affected by the orders sought herein by the plaintiff. Whether or not the alleged subdivision was illegal as claimed by the plaintiff is an issue that can only be determined at the trial and the applicants who are the beneficiaries of the subdivision have a right to be heard by the court on the issue.

For the foregoing reasons, I find merit in the Notice of Motion application dated 6<sup>th</sup> November, 2017. The application is allowed in terms of prayers 2 and 3 thereof. The applicants shall file their defences, bundle of documents and witness statements within 21 days after the plaint is amended as served upon them. The costs of the application shall be in the cause.

**Delivered and Dated this 28<sup>th</sup> Day of November 2019**

**S. OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of**

Mr. Njagi h/b for Mr. Kimathi the plaintiff

N/A for Defendants

Ms. Okuta h/b for Mr. Ngugi for Interested parties

C. Nyokabi-Court Assistant