



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 151 OF 2017

JANE KANARIO STANLEY.....1ST PLAINTIFF/RESPONDENT

JOCELYN KINANU MWIRICHIA.....2ND PLAINTIFF/RESPONDENT

VERSUS

CLIFFORD MWONGELA..... 1ST DEFENDANT/RESPONDENT

JOHN K. MWIRICHIA.....2ND DEFENDANT/RESPONDENT

KIMATHI S. MWIRICHIA.....3RD DEFENDANT/RESPONDENT

RUTH NDURU STANLEY.....4TH DEFENDANT/RESPONDENT

DAVID MUGO.....5TH DEFENDANT/RESPONDENT

MUTHURI RUFUS M'RINGERA.....6TH DEFENDANT/RESPONDENT

AND

CHARLES NKURU RUTERE 1ST INTENDED INTERESTED ...PARTY/APPLICANT

JULIA KANANU NKURU.....2ND INTENDED INTERESTED PARTY/ APPLICANT

RULING

1. This ruling is on an application dated 9/5/2019 brought by the intended interested parties pursuant to provisions of Order 1 Rules 10 (2), (3) and 25 of the Civil Procedure Rules 2010, where the applicants seek orders to be enjoined to this suit as interested parties prior to the hearing of the main suit and that costs of the application be provided for.

2. The application is supported by the grounds on the face of the application and on the supporting affidavit of Charles Nkuru Rutere who deponed that the 2nd applicant and himself bought the whole of the suit parcel Abothuguchi/Mariene/980 from the 1st defendant herein on 28/12/2016 at an agreed consideration of Kshs.7,000,000/= out of which they have paid Kshs. 5,250,000/= leaving a balance of Kshs. 2,249,820/=. He further added that none of the family members were in occupation of the suit land as at the time of the purchase, and therefore they have reason to believe that this suit is a scheme by the 1st defendant and his other family members to try and stall and frustrate the sale transaction.

3. The applicants contend that they have sued the 1st defendant herein in Meru C.M.C.C No. 194 of 2018, for specific performance of the sale transaction between them over LR Abothuguchi/Mariene/980. On 6/5/2019 when their suit came up for hearing, an application was filed by the plaintiffs herein seeking leave to have the plaintiffs and some defendants enjoined to the same case as interested parties. The applicants therefore aver that there is a need for them to be enjoined in this suit to ensure that their interest in the suit land is protected.

4. On 26.9.2019, when the application was scheduled for oral hearing, M/s Nyamu for 1st defendant, Mr. Mwirigi holding brief for Mr. Ondieki for 2nd, 3rd and 4th defendants and M/s Mutinda holding brief for Mr. Kiogora for 6th defendant, all indicated that they would not be opposing the application. Earlier on 31.7.2019, the court had given directions to the effect that any respondent who wished to file any Replying Affidavit in opposition to the application was to do so within 30 days, that is by 31.8.2019. And by 26.9.2019, none of the parties to the suit had filed any replying affidavit. However, Mrs. Kaume for the plaintiffs did seek court's leave to file their replying affidavit

within 7 days which prayer was allowed by the court and that replying affidavit was duly filed on 3.10.2019. From this record, the replying affidavit filed by 3rd defendant on 15.10.2019 has no basis and the same is hereby disregarded in the determination of this application.

5. The 1st plaintiff is the one who has sworn an affidavit in opposition to the application on behalf of herself and the 2nd plaintiff. She avers that their claim is based on trust and hence, the applicants should wait for the determination of the plaintiff's suit and then proceed to claim from the 1st defendant. The plaintiffs admit that they did apply to be enjoined in the case Meru CMCC 194 of 2018 so as to have their interests protected. The plaintiffs contend that the applicants will not suffer any loss if they are not enjoined in this suit hence their application should be dismissed,

Determination

6. The issue for determination is **whether the applicants should be enjoined in this suit as interested parties.**

7. The **Black's Law Dictionary 9th Edition, page 1232** defines an interested party as;

"A party who has a recognizable stake (and therefore standing) in the matter"

8. **Order 1 Rule 10(2) Civil Procedure Rules** provides as follows:

" 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 to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added".

9. A party claiming to be enjoined in proceedings must have an interest in the pending litigation, but the interest must be legal, identifiable or demonstrate a duty. In **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 interested party is to be joined in a suit:

"..... 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".

10. The applicants have availed the land sale agreement as annexure CNR1 indicating that they bought the suit land on 28.12.2016. they have apparently paid a substantial amount of money to wit Kshs.5,250,180 leaving a balance of Kshs.2,249,820. It therefore follows that these applicants have a recognizable stake on the suit land.

11. Further it is noted that the present suit was filed much later on 12.5.2017 after the land sale agreement. Any orders given pursuant to the determination of this suit will certainly affect the interests of the applicants. It is also not lost to this court that plaintiffs have admitted that they did apply to be enjoined as interested parties in the case filed by the applicants herein (Meru CMCC No. 194/18). On the same breadth, the applicants should not be barred from being enjoined in this case.

12. In the circumstances the application is allowed. The costs of the application shall abide the outcome of this suit

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 27TH NOVEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Mutuma holding brief for Mrs. Kaume for plaintiffs

Ondieki for 2nd, 3rd, & 4th respondent

Both plaintiffs

1st, 2nd and 3rd defendants

HON. LUCY. N. MBUGUA

ELC JUDGE