



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 42 OF 2018

**KENNON MWITI MBAE (suing as the legal representative of the estate of
SILAS JUDAH MBAE DECEASED).....PLAINTIFF/RESPONDENT**

VERSUS

ZAVERIO KIAMBA MWAMBA.....1ST DEFENDANT

THE LAND REGISTRAR, IMENTI NORTH DISTRICT.....2ND DEFENDANT

THE SURVEYOR, IMENTI NORTH DISTRICT.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

Z.NYAMU ARIMI.....5TH DEFENDANT

FESTUS RIUNGU RIMBERIA.....INTENDED INTERESTED PARTY

RULING

1. **FESTUS RIUNGU RIMBERA** the intended Interested Party seeks to be enjoined in this suit as an interested party. He thus filed the application dated 27th June 2019 premising his application on the fact that he is a purchaser of 4 ½ acres out of the Original Suit land **KIIRUA NAARI/54** before it was sub-divided into the current portions.

2. In support of his application he averred that he bought an initial one acre from **STEPHEN MWAMBA NGARE** on 10th May 1990 and a further 3 ½ acres on 24th November 1993. That the proprietor put him into possession of the same but he died before he could transfer the land to him. That he only came to learn of this case when he visited the lands registry to place a caution on the land only to find the original land had been subdivided and registered in the names of his son and the 1st Defendant herein.

3. The application was opposed by the plaintiff through Replying affidavit filed on 5th July 2019 where he averred that the applicant’s claim does not relate to any of the parties herein, and that the alleged transaction is time barred as it occurred 29 years ago.

4. Both parties canvassed the application through written submissions which I have dully considered.

5. The plaintiff in this suit prays for the cancellation of title issued in the name of the 1st Defendant over land parcel **NO. KIIRUA/NAARI/54** and the subsequent subdivisions **L.R. NO. KIIRUA/NAARI/5257, 5258, 5259, 5260, 5261 AND 5262**. He alleged that his father, **SILAS JUDAH MBAE (now deceased)** was the registered proprietor of the suit premises until the date of his demise on 07/11/1996. That on 5th July 20112 he was issued with a Certificate of Confirmation of grant and it is only when he sought to register the suit premises in the name of the beneficiaries of the estate that he realised that the same had been registered in the name of the 1st Defendant.

6. The legal platform relating to joinder of interested parties to a suit is found in Order 1 Rule 10(2) of the Civil Procedure Rules which provides 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 to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.

7. 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 **Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR**, the Supreme Court listed the following elements as applicable where a party seeks to be enjoined in proceedings as an interested party:

(i) “The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

(ii) The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

(iii) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court”.

8. The interested party’s claim arises out of the agreement availed by the applicant, one dated 10.5.1990 and the other dated 24.11.1993. The suit land in both agreements is parcel no. **KIRUUA/NAARI/54**, the suit land.

This court would be interested in unearthing how the applicant was entering into transactions with Stephen Mwamba when the land was already in the hands of Silas Judah Mbae. Further, the issue of limitation of the claim can be raised once this applicant is on board this suit.

9. It is not lost to this court that on 4.3.2019, this court allowed another applicant to be enjoined in this suit as an interested party, while another one is on the way, the one who has filed an application dated 9.8.2019. Perhaps these interested parties will shed some light on the state of affairs of the suit land down memory lane!

10. In the circumstances, the application dated 27.6.2019 is allowed with no orders as to costs.

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

C/A: Kananu

Mutuma holding brief for Thangicia for plaintiffs
Kiety for AG

Kiplagat for 2nd interested party

M/s Murithi holding brief for Kimathi K for 1st interested party

HON. LUCY. N. MBUGUA

ELC JUDGE