



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC APPEAL NO. 121 OF 2013

NJOMO NJERU.....1ST APPELLANT /RESPONDENT

SAMUEL MBAU NJUGUNA.....2ND APPELLANT/RESPONDENT

JOSEPH MUGO NDAMBIRI.....3RD APPELLANT/RESPONDENT

VERSUS

PRISCILLA WANJIRA.....RESPONDENT

AND

JAMES NDWIGA NJOGU.....INTERESTED PARTY

RULING

The interested party who is also the applicant herein brought the Notice of Motion dated 10th October 2016 under **Order 1 Rule 10 & 14 CPR, Section 1A, 1B & 100 CPA, Article 40 & 159** of the Constitution of Kenya 2010. The applicant/interested party seeks the following orders:

(1) Spent.

(2) That this Honourable Court be pleased to grant the interested party/applicant be and is hereby enjoined in this suit.

(3) That this Honourable Court be pleased to grant the intended interested party/applicant a temporary injunction against the respondents, their agents or anybody else whatsoever acting on their behalf or behest from alienating, disposing off, selling, trespassing on or in any other way dealing with land parcel No. KABARE/NGIROCHE/1076.

(4) That pending the hearing of this application, this Honourable Court be pleased to issue a mandatory injunction against the respondents, their agents herein from alienating, disposing off, selling, trespassing on or in any other way dealing with land parcel No. KABARE/NGIROCHE/1076.

(5) That the District Land Registrar Kerugoya be pleased to enter a restriction/caveat against land title No. KABARE/NGIROCHE/1076 pending the hearing and determination of this suit.

(6) That any other necessary directions be given.

(7) That costs of this application be in the cause.

The application is supported by the affidavit of the interested party and grounds shown on the face of the application. The supporting affidavit is attached with numerous documents in further support of the application. The said application was brought under certificate of urgency. When the same was placed before Hon. Mr. Justice B.N. Oloo, duty Judge on 11th October 2016 he certified the same urgent and granted the interested party leave to be enjoined in this appeal as an interested party. On 2nd December 2016, the firm of Ngigi Gichoya & Co. Advocates for the respondent (Priscilla Wanjira) filed grounds of opposition in response to the said application.

APPLICANT'S/INTERESTED PARTY'S CASE

The interested party stated that he came to learn that the appellants/respondents filed this suit claiming that all the parcel of land known as

title No. KABARE/NGIROCHE/1076 belong to them while in actual sense, the same belongs to him after he validly bought the same in a public auction and that he has a valid Court order declaring him the owner. He stated that on or about 2nd June 2009, he successfully participated in a public auction and emerged the highest bidder of all that land known as title number KABARE/NGIROCHE/1076. He attached copies of certificates of sale and a Court order in PMCC No. 73 of 2009.

He contends that at the time of the said auction, he was not aware that there was a suit pending and that the title deed for the suit property was registered in the name of the 1st appellant Njomo Njeru who was unable to redeem his property. The interested party/applicant further stated that he attempted to sell the land but rumours had it that it had a dispute which he later confirmed existed. He stated that after he learnt of the existence of this case, he now seeks to be enjoined so that the issues in controversy can be adjudicated upon with finality. He stated that he is the registered owner of the suit property L.R. No. KABARE/NGIROCHE/1076 and that he is in actual possession and use of the same and that a lot of prejudice will be occasioned to him if this application is not allowed. Other than the grounds of opposition filed by the firm of Ngigi Gichoya & Co. Advocates, the respondents and the appellants did not file any response.

LEGAL ANALYSIS

I have considered the Notice of Motion and the supporting affidavit. I have also taken into consideration the submissions and the applicable law. The applicant/interested party was not a party in the original suit before the trial Court in SRM CC No. 135 of 2013. From my evaluation of the affidavit evidence and the documents annexed thereto, it is not disputed that the suit property is currently registered in the name of James Ndwiga Njogu who is the applicant/interested party herein. The said applicant/interested party has deponed in his supporting affidavit to this application that he bought the suit property through a public auction and was issued with a certificate of sale and later a Court order which upon presentation to the Land Registrar caused the transfer to be effected in his favour. All these documents including the title deed were annexed to his supporting affidavit which has not been controverted in any way.

An interested party was defined in the case of *Judicial Service Commission Vs Speaker of the National Assembly & Another* as follows:

“From the foregoing, it is clear that an interested party is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings”.

Again in the case of *Mumo Matemu Vs Trusted Society of Human Rights Alliance and 5 others*, the Court holds as follows:

“Moreover, we take note that our commitment to the values of substantive justice, public participation, inclusiveness, transparency and accountability under Article 10 of the Constitution by necessity and logic broadens access to the Courts. In this broader context, this Court cannot fashion or sanction an invitation to a judicial standard for locus standi that places hurdles on access to the Courts, except only when such litigation is hypothetical, abstract or is an abuse of the Judicial process

The standard guide for locus standi must remain the command in Article 258 of the Constitution”.

In the case of *Francis Karoki Muruatetu & Another Vs Republic & 5 others Petition No. 15 as consolidated with 16 of 2013 (2016) e K.L.R.*, the Court set out the elements applicable where a party seeks to be enjoined in proceedings as an interested party as follows:

- (i) The personal interest or stake that the party has in the matter must be set out on 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 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 those submissions are not merely a replication of what the other parties will be making before the Court”.***

The intended interested party has demonstrated from his affidavit evidence and the documents attached thereto that he is the registered proprietor of the suit property after he bought it from a public auction. I am satisfied that the intended interested party has demonstrated that he has high stakes in the suit property which he is likely to suffer irreparable loss unless he is enjoined as an interested party to ventilate those interests. In the upshot, I find the Notice of Motion dated 10th October 2016 merited and the same is allowed as follows:

(1) The applicant, James Ndwiga Njogu be and is hereby enjoined as an interested party herein.

(2) An injunction is hereby issued against the respondents, their agents and/or anybody else whatsoever acting on their behalf or behest from alienating, disposing off, selling, trespassing on, or in any other way dealing with land parcel No. KABARE/NGIROCHE/1076 pending the hearing and determination of the intended Appeal.

(3) That the District Land Registrar, Kirinyaga is hereby directed to place a caveat/restriction against land No. KABARE/NGIROCHE/1076 pending the hearing and final determination of the intended Appeal.

(4) The costs of this application to abide the event.

READ, DELIVERED AND SIGNED IN OPEN COURT AT KERUGOYA THIS 22ND DAY OF NOVEMBER, 2019.

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E.C. CHERONO

ELC JUDGE

22ND NOVEMBER, 2019

In the presence of:

1. *Mr. Abubakar holding brief for Quantai for Interested party*
2. *Priscilla Wanjira – present*
3. *Mbogo – Court clerk – present*