



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC NO. 214 OF 2018

THREE STAR SELF HELP GROUP

KATANA NGUMA KALAM

EUADI SAID & 30 OTHERS.....PLAINTIFFS

-VERSUS-

1. SHIRLAND INVESTMENTS LIMITED

2. KENYA AGRICULTURAL RESEARCH INSTITUTE (KARI)

3. NASIOMBE MUTHONYI

4. NAWAR AND BROTHERS LIMITED

5. LANDS REGISTRY MOMBASA

6. ATTORNEY GENERAL MOMBASA.....DEFENDANTS

AND

1. JARED MWATHA

2. ABEBE GABRE

3. DANIEL MUTERO

4. JANE GITHERE

5. JOSEPH KANYI

6. MORRIS MBURU

7. PETER MWAURA

8. NABHAN SWALEH

9. GRACE NASIRA

10. PETER THUO

11. NANCY LUSENO.....INTENDED INTERESTED PARTIES

RULING

1. The application for consideration is the Notice of Motion dated 21st March, 2019 in which the applicants seek leave to be enjoined in the suit as interested parties. The applicant is premised on the grounds that the applicants are the owners in succession of the property currently owned by the 3rd defendant and are likely to be affected by the orders of this court. That the plaintiffs have severally tried to invade the interested parties land and are intent on using the court orders herein to invade the said land. The Applicants state that the 3rd Respondent is resident in the United States of America and it is unlikely that he has been served with the proceedings herein. They aver that if orders are obtained against the 3rd respondent, the execution resulting therefrom is likely to directly affect them.

2. The application is supported by the affidavit of Peter Thuo Gathuri sworn on 21st March 2019 in which he avers that he bought the piece of land measuring approximately 28.7 acres being PLOT NO.MN/II/109 from Ferudoza Mohamed and that upon the transfer to him, he caused it to be subdivided into some portions which subdivisions were all registered at the lands office in Kilifi. He stated that he later sold several subdivisions to the intended interested parties and is the registered owner of SUBDIVISION NO.6958 (ORIGINAL NO.6955/6) SECTION III MAINLAND NORTH. He avers that the defendants herein with intention of invading the said subdivision attempted through violence to stop the applicants from constructing the perimeter walls around their various plots and have variously tried to invade the plots, a matter that was allegedly reported to the police.

3. It is deposed that the 3rd defendant herein, Nasiombe Muthuni, acquired his land from Jared Mwatha, the 1st Interested Party out of the subdivisions and therefore has no interest in the plots mentioned in the suit. The Applicants contend that the inclusion of the 3rd Respondent in this suit is a ploy to invade the Applicants plots, and the applicants fear that the drafting of the suit as presented is intentionally fashioned to cause confusion.

4. In opposing the application the plaintiffs filed a replying affidavit sworn by Faudi Said on 24th September 2018 and filed on 13th May 2019. The Plaintiffs aver that the 3rd defendant has appointed the firm of Kagwima Karanja & Co. Advocates and will not be prejudiced by the orders of the court. That the affidavit in support of the application is sworn by one intended interested party on behalf of all intended interested parties but there is no authority to act as such. The plaintiffs state that they know that Peter Thuo Gathuri sold the suit property to the intended interested parties and is trying to cover up the illegal sale by filing this application. That the applicants have not filed any supporting documents to show that they are the registered owners of the suit property or are in current occupation of the same. The Plaintiffs contend that the application is misconceived and defective and should be dismissed.

5. The application was not opposed by the 1st, 5th and 6th defendants. In addition, the 2nd, 3rd and 4th defendants did not take part in the application.

6. I have considered the application and the affidavits on record as well as the submissions filed. The application is stated to be brought under Section 3A and 80 of the Civil Procedure Act, Order 45 Rule 1 and 2 and Order 51 Rule 1 of the Civil Procedure Rules. However, the relevant provision for an application for joinder of parties is Order 1 Rule 10(2) of the Civil Procedure Rules. The court has further noted that whereas in the affidavit in support of the application the applicants have stated that they have filed an annexure, there is no such annexure attached to the affidavit. The court has also noted that the Replying Affidavit is indicated to have been sworn on 24th September, 2018, which is several months before the application herein was filed. The application was filed on 21st March 2019 and therefore it is not possible that a response to it was being made on 24th September, 2018. All the same, despite of these anomalies, the court will invoke Article 159 of the Constitution and consider the application on merit.

7. The applicants have contended that they have an interest in the suit property. The plaintiffs have stated that they know for a fact that Peter Thuo Gathuri, the 10th Applicant sold the suit property to the applicants. This being a land matter and the applicants having claimed that they have an interest in the suit property, which is also admitted by the plaintiffs in their replying affidavit, I feel the Applicants claim for whatever is worth ought to be heard on merits. Accordingly, I allow the Applicants application for them to be joined in the suit as defendants. The applicants will in accordance with Order 7 of the Civil Procedure Rules, file their defence and counter-claim, if any, within fourteen (14) days from the date of this ruling, and the plaintiffs may file a reply to the defence and counter-claim after which the matter will proceed for pre-trial directions. The costs of the application will be in the cause.

DATED, SIGNED and DELIVERED at MOMBASA this 19th day of November 2019.

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Ms. Mwendia holding brief for Omollo for plaintiff

No appearance for defendants

Esther Court Assistant

C.K. YANO

JUDGE