

REPUBLIC OF KENYA

THE ENVIRONMENT & LAND COURT

AT GARISSA

ELC CASE NO. 62 OF 2017

MONZE KIVOTO.....PLAINTIFF

VERSUS

DAVID MUSYOKI KILONZO.....DEFENDANT

RULING

The Application before me is the Chamber Summons dated 18th October 2017 brought under Section 62 of the Land Registration Act, 2012. The defendant who is the applicant is seeking leave of this honourable court enjoined in these proceedings as an interested party. That application is supported by the defendant's affidavit sworn on the same date.

In that supporting affidavit, the defendant avers that in the month of June, 2014 he purchased the suit property registration No. MWINGI/TYAA-KAMUTHALE/1938 from one, NZAMBI MWINZI who is the proposed interested party. He then started developing the land the plaintiff sued him and even obtained restraining orders concerning the suit property. The defendant believes that it is only fair and just that the application to enjoin the interested party be allowed so that he can shade light and that the defendant's interests are protected.

The application is opposed by the plaintiff, who filed grounds of opposition dated and filed on 27th November, 2017. On 16/1/2018, the defendant through his advocates on record M/s Mbaluka & Co. Advocates filed written submissions in support of the said application.

I have considered the application and the supporting affidavit. I have also considered the grounds of opposition and the pleadings herein. The plaintiff has filed this suit against the defendant saying that he has a cause of action against the defendant whom he accused for trespassing into the suit land sometime in 2014 or thereabouts. It is the plaintiff who chooses the person to sue in a court of law. It is for that person to either admit the allegations leveled against him or deny the same in his pleadings.

The defendant has filed a statement of defence dated 18th October, 2017. In that statement of defence the defendant has not made a reference to the proposed interested party whom he seeks to be enjoined as a party. If the defendant denies the plaintiffs claim, how then does he want to drag in the proposed interested party into this suit? The defendant has not in my view demonstrated what interest the proposed interested party has which can help this court arrive at a fair and just decision. In the defendants list of witnesses he has named NZAMBI MWINZI who is the proposed interested party as a witness. If the defendant wishes to have the proposed interested party to be enjoined as a party to this suit to shade light on what he knows about the suit property then he is better placed to do so as a witness. To allow the application and have the proposed interested party enjoined as a party is not an impediment to the overriding objective of ensuring that the rules of procedure facilitate the just expeditious proportionate and affordable resolution of disputes in our Judicial system.

For the reasons I have given herein above I find the application by the defendant to make proposed interested party enjoined into this suit is unmerited, frivolous and lack in merit. The same is hereby dismissed with costs.

Read and delivered in the open court this 29th January, 2018

E.C Cherono (Mr.)

ELC Judge

In the presence of:

1. Ijabo- Court clerk and in the absence of the defendant and the plaintiff or their advocates.