



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.217 OF 2017

CATHOLIC DIOCESE OF

NAKURU (REGISTERED TRUSTEES).....PLAINTIFF

VERSUS

PAUL GACHANJA MWANIKI.....DEFENDANT

RULING

(Application for joinder as interested party; case being one of adverse possession; registered owner having sold his interest to the intended interested party; consent of Land Control Board and transfer executed only awaiting registration; clear interest in the suit land shown; application allowed).

1. The application before me is that dated 19 September 2017 filed by one Regina Njeri Kamau vide which she has applied to be enjoined in this suit as an interested party.

2. The suit itself was commenced on 19 April 2012 by way of an Originating Summons, vide which the applicant (whom for ease of reference I will refer to as the plaintiff) sought orders that she be declared owner, by way of adverse possession, of a portion of 0.74 hectares of the land parcel Mau Narok/Siapei Block 3/295. The respondent (whom I will refer to as the defendant) in the said Originating Summons is one Paul Gachanja Mwaniki. In the suit, the plaintiff claimed that she has been in possession of the suit property from the year 1999 and thus deserving to be declared owner by way of adverse possession.

3. The position of the defendant is that although he is the registered proprietor of the suit land, he sold this land to one George Kamau Machora. He has stated that at the time of sale, title deeds had not been issued, and due to this confusion, the purchaser was erroneously shown the land parcel Mau Narok/Siapei Block 3/298, and as a consequence, the purchaser settled on this land and commenced developments. The irregularity was noted in the year 1999, when the owner of the land parcel No. 298, one Mary Gathoni Kamau, appeared and claimed her land. On investigation, it was also discovered that the Catholic Diocese was now in occupation of the land parcel No. 295 (the suit land) which is the same land that was sold to Mr. Machora.

4. In this application, the applicant, has averred that she is the wife of George Kamau Machora. She has stated that the said Mr. Machora died on 24 July 2017. She thereafter petitioned for a grant of letters of administration ad litem for his estate for purposes of being enjoined to this suit. She has stated that her late husband purchased the suit land from the respondent, but owing to a confusion on the ground possession, he took occupation of the wrong land. She has deposed that when this was discovered, her late husband approached the local parish of the plaintiff but they were not assisted to resolve the matter. She has deposed that the sale agreement between the defendant and her late husband already has approval of the Land Control Board and the defendant has already executed a transfer of the said land to her late husband. It is for the reason that the estate of her late husband has an interest in the suit land that she has sought to be enjoined as interested party.

5. The application is not opposed by either plaintiff or defendant. On my part, I do believe that the interested party has shown that the estate of George Kamau Machora, had purchased the suit land, sought consent of the Land Control Board which was issued, and drew a transfer which is pending registration. The same cannot now be registered as there is a caution placed in the register of the suit land by the plaintiff. Thus, despite the property being registered in the name of the defendant, who must by virtue of that registration be the defendant in the case, the defendant actually no longer has any interest in the said land, having ceded the same to the estate of the deceased. For purposes of contesting the case, I find it necessary to enjoin the applicant as an interested party. She may also be in possession of certain facts relating to the occupation of the suit property which will be beneficial to this court in arriving at a decision whether the plaintiff has acquired title by way of adverse possession.

6. I therefore allow the application. However, it should be clear that the applicant is not being enjoined to the suit as interested party in her capacity, but as administrator of the estate of the late George Kamau Machora. There shall be no orders as to costs in respect of this

application.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 25th day of April 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Kanyi holding brief for Mr. Karanja for the applicant.

Ms. Kabalika holding brief for Mr. Orege for the plaintiff.

Defendant present acting in person.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU