



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC CASE NO. 3 OF 2015**

**MWANGI KIMINDA.....1ST PLAINTIFF/RESPONDENT**

**LUCY WANGARI MWANGI...2ND PLAINTIFF/RESPONDENT**

**-VERSUS-**

**GOSPEL OUTREACH**

**CHURCH-GAKAWA (HOPE CHRISTIAN**

**WORSHIP CENTRE).....1ST DEFENDANT/APPLICANT**

**PASTOR IN CHARGE GOSPEL OUTREACH**

**CHURCH-GAKAWA.....2ND DEFENDANT/APPLICANT**

**RULING**

1. This ruling is in respect of the chamber summons dated **26th May, 2017** through which the 1st and the 2nd defendants/applicants (hereinafter referred to as “the applicants”) seek leave to issue a third party notice upon Charles Wahome (hereinafter referred to as “the intended third party”).
2. The application is premised on the grounds that the intended 3rd party is the one who sold the subject matter of the suit to wit Gakawa/Kahurura Block 1/Ichuga/1303 to them; that the applicants have pleaded that they are innocent purchasers for value and that their interest in the suit property is protected by law. Further that the issue for determination in this suit is between the plaintiffs, the applicants and the intended 3rd party.
3. According to the applicants, enjoining the intended third party into this suit will enable the court to fully and properly adjudicate the matter in issue.
4. Although under **Order 1 Rule 15(1)** of the Civil Procedure Rules the application ought to be heard *ex parte*, owing to opposition by counsel for the plaintiffs/Respondents, the court allowed the application to be heard *inter partes*.
5. When the matter came up for hearing, counsel for the applicants informed the court that the applicants intend to take a third party notice against the intended 3rd party because the intended third party is the one who pointed out the suit property to the applicants. According to the applicant’s counsel it is the intended 3rd party who bears full responsibility on the subject matter of this suit.
6. Counsel for the plaintiffs/respondents opposed the application on the ground that the documents relied on by the applicants in support of the claim that responsibility lies with the intended third party (sale agreement) formed part of the applicants list of documents before the suit began.
7. According to counsel for the plaintiffs/ respondents, the plaintiffs should not be dragged into the dispute between the defendants/ applicants and the intended third party.
8. Terming the application an afterthought, the advocate for the plaintiffs/respondents pointed out that the application was brought following the evidence adduced during the hearing of the plaintiffs’ case.

9. In a rejoinder, counsel for the applicants urged the court to be guided by **Article 159** of the Constitution of Kenya, 2010 and **Sections 1, 2 and 3A** of the Civil Procedure Act.

### **Analysis and determination**

10. According to the pleadings filed in this suit, in particular, the plaintiffs/respondents own plaint dated 15th January, 2015 the plaintiffs pleaded that at the time they bought the suit property there was a permanent building which stood therein. According to the plaintiff's own pleadings the building extended to the immediate neighbouring parcel of land (paragraph 5).

11. It is the 1st plaintiff's case that when he enquired from the 2nd defendant why they had encroached on his parcel of land, the 2nd defendant/applicant informed him that the owner of the neighbouring land had purported that his land was on sale and that the defendants were buying it from him.

12. In their statement of defence in paragraph 4 thereof, the defendants/applicants have averred that they purchased the suit property from the intended third party in good faith and that the intended third party purported to be an agent and joint owner of the building erected on the suit property.

13. Whereas the plaintiffs have averred that the boundaries to the two parcels of land herein were clearly demarcated, the defendants have averred that there was no demarcation or boundary between the two parcels of land on which the building stood.

14. According to the defendants/applicants they bought the land inclusive of the building and were given vacant possession thereof by the intended third party.

15. Whilst the plaintiffs/respondents contend that they are not parties to any arrangements between the applicants and the intended third party, given the fact that the applicants are on the suit property allegedly pursuant to an agreement entered between them and the intended third party and given the fact that the plaintiffs, *inter alia*, seek general damages against the applicants, I am satisfied that the applicants have a genuine reason for seeking to have the intended third party enjoined to the suit so that all the issues touching the subject matter of the suit can be fairly and effectually determined not only as between the plaintiffs and them but also as between the applicants and the intended third party. In this regard see **Order 1 Rule 15(1)** of the civil procedure rules which provides as follows:-

**“Where a defendant claims any other person not already a party to the suit (hereinafter called the third party)-**

**a. That he is entitled to contribution or indemnity; or**

**b. That he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or**

**c. That any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should be properly determined not only as between the plaintiff and the defendant but between the plaintiff and the defendant and the third party or between any or either of them,**

**He shall apply to the court within fourteen days after the close of pleadings for leave of the court to issue a notice (hereinafter called a third party notice) to that effect; and such leave shall be applied for by summons in chambers ex parte supported by affidavit.”**

16. Being of the view that the intended third party is a necessary party for the purpose of assisting the court to fairly and effectually determine all the issues raised in the suit, I find the application to be merited and allow it as prayed.

**Dated, Signed and Delivered in open court at Nyeri this 16th day of April, 2018.**

**L N WAITHAKA**

**JUDGE**

Coram:

Mr. Kiminda for plaintiff

N/A for the defendants

Court assistant - Esther