



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC NO. 657 OF 2016 (05)

BENHUR MILTON MULONZA MWANGANGI.....PLAINTIFF

=AND=

BAYUKA OBONYO ADVOCATES & ANOTHER.....DEFENDANTS

=AND=

ANNE ADHIAMBO OBONGA

TORRY MMBOGA KELLS

BILLY OKEYO.....INTERESTED PARTIES

RULING

1. The interested parties/applicants filed a Notice of Motion dated 15th November 2017, in which they seek the following orders:-

1. That, the interested parties be joined in this suit as co-plaintiffs

2. That, the defendants be ordered to deposit kshs.60,000,000 in a joint Account of both Advocates for the plaintiff pending the hearing and determination of this application.

3. That, the costs of this suit be provided for.

2. The applicants and the Plaintiff/Respondent were tenants in common in equal shares in respect of a property known as LR No.209/20031 (suit property). The applicants and the Plaintiff/Respondent agreed to sale the suit property to Kabasiran Company Limited at a consideration of Kshs.60,000,000/=. An agreement to that effect was drawn on 3rd April 2015. The agreement was signed by the applicants as well as the plaintiff /respondent but was not executed by Kabasiran Company Limited.

3. Despite the agreement not being signed by Kabasiran Company Limited, the applicant's contend that a deposit of Kshs.9,000,000/= was paid by Kabasiran Company Limited which was to be shared in accordance with the terms in the agreement. Unknown to the applicants, the plaintiff/respondent had interest in Kabasiran Company Limited and had actually entered into a joint venture agreement with Shady Acres Limited which is an interested party in this suit.

4. The applicants contend that they discovered the existence of this suit filed by the Plaintiff /Respondent in which the plaintiff/respondent entered into the joint venture on the basis that he had agreed to purchase the suit property from the applicants which was not the case. The applicants contend that the Plaintiff/Respondent intended to defraud them their share of the balance of the purchase price of Kshs.51,000,000/=.

5. The Respondents who were duly served with the applicants application did not file a response. During the hearing of the application, Mr Gitonga for the Plaintiff /Respondent indicated that he was not opposed to the application save that he wanted certain paragraphs in the supporting affidavit and one ground in the body of the application expunged for being scandalous of the Plaintiff/ Respondent.

6. I have considered the application by the applicant and even though it is not opposed I have to determine whether the prayers sought should be granted. To begin with, the applicants are referring to the suit property in their application but they have annexed a copy of title document which relates to a different property altogether. The annexed copy relates to LR No.13526 which is in the name of the plaintiff/respondent

and one Anne Wanjira and Billy Okeyo.

7. In the suit filed by the plaintiff/respondent, the Plaintiff /Respondent is seeking to enforce a professional undertaking against the defendants/respondents. The suit property has already been transferred to Kabasiran Company Limited. The Defendants/Respondents had given a professional undertaking that Kshs60,000,000 was to be released to the Plaintiff/Respondent upon successful transfer and registration of the suit property in the name of Kabasiran Company Limited. The suit property has already been registered in the name of Kabasiran Company Limited but the Defendants/Respondents have not transferred the Kshs.60,000,000/= to the Plaintiff/Respondent.

8. The plaintiff/respondent was not seeking to recover the balance of Kshs.51,000,000/= as the applicants allege. The applicants are not party to the joint venture agreement and I do not understand how they can seek to be enjoined in these proceedings as co-plaintiffs. At best the applicants would have been enjoined as interested parties for purposes of monitoring how the litigation between the Plaintiff/Respondent and the defendants goes on. The picture which emerges from this application is an intricate Webb of dealings which is only known to the parties themselves. I say to because I do not understand how a property which is owned as tenants in common in equal share can be shared in unequal proportions in terms contained in an agreement which is not signed by all the parties.

9. If the applicants' contention that they did not know that the Plaintiff/Respondent had interest in Kabasiran Company Limited is true, then it would appear that the Plaintiff/Respondent has already pulled a quick one against them. The suit property has already been registered in the name of Kabasiran Company Limited where he has interest. He has already entered into a joint venture agreement the basis of which he is seeking to enforce a professional undertaking. As I have said hereinabove, the applicants are not parties to the joint venture agreement and they cannot therefore seek to have the Kshs.60,000,000/= deposited in the joint account of their advocates and that of the Plaintiff/Respondent. If the applicant's wish to recover the balance of the purchase price they can do so in a separate suit but not in this suit which is seeking enforcement of a professional undertaking. I therefore find that the applicant's application lacks merit. It is hereby dismissed with no order as to costs.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 5th day of April, 2018.

E.O .OBAGA

JUDGE

In the presence of;-

Mr Gitonga for Plaintiff

Mr Ashiruma for 1st defendant and 1st and 2nd interested parties

Mr Wati for 2nd defendant

Mr Moindi for intended interested parties

Court Assistant: Kevin

E.O .OBAGA

JUDGE