



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

THIKA LAW COURTS

ELC CASE NO.476 OF 2017

(FORMERLY NAIROBI ELC.NO.19 OF 2012)

HELENE MARGARETHA Van Der ROEST.....1ST PLAINTIFF/RESPONDENT

VERONICA WAJIRU NGIBUINI.....2ND PLAINTIFF/RESPONDENT

MARY KERU NJEGE.....3RD PLAINTIFF/RESPONDENT

-VERSUS-

JAMES MWANGI GACHERU.....1ST DEFENDANT/RESPONDENT

MARTHA KABURA GACHERU.....2ND DEFENDANT/RESPONDENT

STAR FOR JESUS MINISTRIES

INTERNATIONAL.....INTENDED INTERESTED/NECESSARY PARTY/APPLICANT

RULING

Coming up for determination is the Intended Interested Party's application dated **19th October 2017**, brought under Order 1 Rule 10(2) & 14 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act and has sought for the following orders:-

- 1. That this Honourable Court be pleased to grant leave to the Intended Interested/Necessary Party to be joined in this suit as a Defendant.***
- 2. That this Honourable Court be pleased to grant leave to the Intended Interested/Necessary Party to file and serve upon the parties hereto a Defence to this suit and any Counter-claim as against any of the Plaintiffs, and consequently be at liberty to participate at the hearing hereof.***
- 3. That the costs of this application be provided for.***

The application is premised on the following grounds:-

- 1) That the Intended Interested/Necessary Party is the Purchaser, in the Agreement for Sale, the subject matter of this suit dated 30th August 2006, of LR.74/85 (Original No.74/19/9) and LR.74/83 (Original No.74/19/7).***
- 2) That the Plaintiffs herein have no colour of right to claim under the said Agreement for Sale dated 30th August 2006 as they are not a party thereto.***
- 3) That the involvement of the Intended Interested/Necessary Party herein is for the Honourable Court to effectually and completely adjudicate upon and settle all questions involved in the instant suit, which suit already been set down for hearing.***
- 4) That no undue prejudice will be occasioned to the Plaintiffs and Defendants if the orders prayed for are granted and it is reasonable, fair and in the interests of justice in all the circumstances of this suit that the orders prayed for are granted.***

The application is further supported by the *affidavit* of **Leah Marie Githanga**, who averred that she is the **Chairperson** of **Star for Jesus Ministries International**, the Intended Interested Party which is a Society registered under the Societies Act under Registration No.Soc/45569. She further alleged that on or about **30th August 2006**, the Intended Interested Party entered into an **Agreement for Sale**, with the 1st and 2nd Defendants herein for sale of **LR.No.74/84(Original No.74/19/9)** and **LR.No.74/83 (Original No.74/19/7)**, the subject matter of the suit herein. It was her further averments that the Intended Interested/Necessary Party duly paid the full purchase price as stated in the **Sale Agreement**, and was merely awaiting completion under **Clause 4** of the **Sale Agreement**. It was her contention that the Intended Interested/Necessary Party has just gotten knowledge of this suit which was instituted by the Plaintiffs against the Defendants herein and the said suit is premised on the said **Sale Agreement** wherein the Plaintiffs are not parties to the said sale agreement. It was her further contention that at the time of institution of this suit, she was still the **Chairperson** of the **Intended Interested Party** who is the full beneficial owner of suit property herein. She contended that the joinder of the Intended Interested/Necessary Party herein is necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the instant suit. She urged the Court to allow the instant application.

The application is opposed by the Plaintiffs herein but supported by the Defendants.

Veronicah Wanjiru Ngibuini, filed a **Replying Affidavit** dated **1st November 2017** and averred that the Applicant (Intended Interested Party) has not provided any evidence to substantiate its relevance or pertinence to the main suit. Further that the proposed Interested Party has not annexed any evidence to prove that it paid the purchase price of **Kshs.3,000,000/=** to the Vendors. She further contended that the Plaintiffs are the founding members of the Society herein and the 1st Plaintiff was the benefactor of the said **Stars for Jesus Ministries International** and she paid the purchase price of **Kshs.3,000,000/=**.

That since the said **Stars of Jesus Ministries Orphanage** was closed by the court, the Court should also determine the question of refund of **Kshs.3,000,000/=** paid by the 1st Plaintiff to the Defendants. It was her contention that the proposed Interested Party would not be relevant in the determination of the dispute herein for reasons of its incompetence and impertinence. She urged the Court to dismiss the instant application.

The deponent to the affidavit in support of the application, **Leah Marie Githanga**, swore a further affidavit and averred that the 1st and 3rd Plaintiffs ceased to be officials of the Intended Interested Party, who is also the purchaser of the suit property, on **7th March 2009**. She alleged that she became an official of the Intended Interested Party on **7th March 2009** and has continued to remain an official thereof to date. It was her further allegation that she is the actual founding member of Intended Interested Party together with **Philip Wanjohi Githaiga** now deceased. She further contended that the completion date was **30th September 2006**, and with all the requirements of completion having been met, the Intended Interested Party is wholly legally entitled to the registration of the subject land in its name. She further reiterated that the joinder of the Intended Interested Party was necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the instant suit.

Veronicah Wanjiru Ngibuini, the 2nd Plaintiff also filed a further **Replying Affidavit** and averred that the body that entered into the agreement for sale dated **30th August 2016** was a Society and not the **Community Based Organization** registered on **21st April 2009**. Further that the law distinguished between a **Society** and a **Community Based Organization**. That the **Community Based Organization (CBO)** known as **Stars for Jesus Ministries International**, having been registered on **21st April 2009**, cannot have contracted the agreement for sale in **2006**. Further that she has been informed by her advocate on record that the **Stars for Jesus Ministries International**, the **Community Based Organization** is not the **Society** that procured the subject suit property and cannot be a relevant or necessary party to the suit. Further that the proposed Interested Party lacks **Corporate Legal Person** to be enjoined in the suit and as such cannot be enjoined.

The application was canvassed by way of **written submissions** which this Court has carefully read and considered. The Court has also considered the relevant provisions of the law and the pleadings in general.

At the centre of the dispute herein is the **Sale Agreement** dated **30th August 2006**, which was entered between the Defendants herein, and **Stars for Jesus Ministries International** who is the Applicant herein as a proposed Interested Party. The Plaintiffs had alleged in their **Plaint** that on **30th August 2006**, the 2nd and 3rd Plaintiffs together with one **Philip Githaiga**, who has since passed on and acting on behalf of **Stars for Jesus Ministries International** and through being financed by the 1st

Plaintiff entered into a **Sale Agreement** with the Defendants for purchase of **LR.No.74/83** and **74/85 respectively**. However after payment of the full purchase price of **Kshs.3,000,000/=** and after completion date, the Vendor have refused and/or failed to convey the title to the purchasers and thus this suit wherein the Plaintiffs have sought for various orders among them an order for specific performance to compel the Defendants to convey the parcels of land to the purchasers.

However, the proposed Interested Party has alleged that despite being the purchaser, it has not been made a party to this suit and that its presence is necessary for effectual and complete adjudication of the dispute herein.

The law governing joinder of parties is stated in **Order 1 Rule 10(2)** of the **Civil procedure Rules** which provides as follows:-

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.

The Plaintiffs have opposed the joinder of the Interested Party to this proceedings and have alleged that the Interested Party's presence is not

necessary and should not be enjoined herein. Further that the Interested

Party is not a **legal person** which is capable of suing or being sued and that its application should be declined. However it is evident that it is the Interested Party that entered into the Sale Agreement with the Defendants herein. On whether it has capacity to sue or not is an issue to be canvassed at the main trial but not at this interlocutory stage.

In determining this matter, the Court will take into account that it has discretion to enjoin a party to the proceedings at any stage of the proceedings so long as the said party is necessary in order to enable the court effectually and completely adjudicate upon the dispute in issue. However, the said discretion must be exercised judicially and the test is that the said party should be a necessary party and that its presence will enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

The Applicant has sought to be enjoined as an interested party herein. As was held in the case of **Brek Sulum Hemed...Vs...Constituency Development Fund Bond & Another (2014) eKLR**, that as Interested Parties, the Applicant need only demonstrate interest in the subject of the suit or in other relevant matter affecting the suit.

Under **Rule 2** of the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013**, an **'Interested Party'** is defined as:

"A person or entity that has an identifiable stake or legal interest in the proceedings before the court but he is not a party to the proceedings or may not be directly involved in the litigation."

It is clear from the proceedings that the **Stars for Jesus Ministries International** is the entity that entered into the Sale Agreement with the Defendants herein. Whether the money for purchase was funded by the 1st Plaintiff or not is a matter of evidence. On the face of the Sale Agreement, the parties in issue are the Defendants and the proposed Interested Party.

The said proposed Interested Party is not a party to this suit but it has identifiable stake or legal interest in the proceedings given that it is the one that entered into the Sale Agreement with the Defendants. The Court finds that the proposed Interested Party is a necessary party herein and its presence is necessary in order to enable the Court to effectually and completely adjudicate upon and settle the dispute herein. The Court will be persuaded by the findings in the case of **Football Kenya Federation.....Vs...Kenya Premier League & Another (2011) eKLR**, where the Court held that:-

"From the above procedural rule, it is clear that the court has unfettered discretion to admit or strike out of proceedings or party with or without an application being made. It is trite that the court can upon satisfying itself that the person whose presence before the court may be necessary in order to enable or assist it effectually and completely determine all questions involved in a dispute, add such a person as a party".

The Court finds that the Intended Interested Party's presence is necessary herein and its joinder to the proceedings will neither prejudice the Plaintiffs nor the Defendants herein. See the case of **Central Kenya Ltd...Vs...Trust Bank & 4 Others CA No.222 of 1998**, where the Court held that:-

"All amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs".

The application is also anchored under Section 3A of the Civil Procedure Act which empowers the court to issue any orders that are necessary in ensuring that end of justice is met and to prevent abuse of the court process.

Having considered the pleadings herein and the annexures thereto and the written submissions, the Court finds that the necessary order herein that will ensure that end of justice is met is in allowing the proposed Interested Party application dated **19th October 2017**.

Consequently, the **Court allows** the instant **Notice of Motion** dated **19th October 2017** **entirely with costs being in the cause**.

From the foregoing, the Court directs the Plaintiffs to amend the Plaintiff accordingly to reflect the enjoined Interested Party as a Defendant herein within a period of 14 days from the date hereof. The enjoined 3rd Defendant is granted leave of 14 days after service of the pleadings to file and serve its Defence to the other parties. Thereafter, the parties to fix the matter for hearing expeditiously so that the disputed issues can be resolved at once.

It is so ordered.

Dated, Signed and Delivered at Thika this 18th day of May 2018.

L. GACHERU

JUDGE

In the presence of

Mr. Odhiambo holding brief for Koki Mbulu for Plaintiffs/Respondents

No appearance for Defendants/Respondents

Mr. Kagiri for Intended Interested Party/Applicant

Lucy - Court clerk.

L. GACHERU

JUDGE

Court – Ruling read in open court in the presence of the above stated advocates.

L. GACHERU

JUDGE

18/5/2018