



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NO. 200 OF 2017

JAMES MURIMI GITHINJI & 2 OTHERS.....PLAINTIFF

=VERSUS=

EMBAKASI RANCHING CO.LTD & ANOTHER.....DEFENDANTS

AND

STEPHEN KARU MAINA & ANOTHER.....INTERESTED PARTIES

RULING

1. This is a ruling in respect of a Notice of Motion dated 21st August 2017. The application is brought by the applicants who are seeking to be enjoined in this suit as defendants.
2. The first and second plaintiffs had filed a suit against Embakasi Ranching Company Limited and one of its directors seeking a permanent injunction restraining the two from interfering with plot Nos 8636 and 8661. They contend that they purchased the two plots in 2013 but that in 2017, the defendants sent hired goons who destroyed a temporary iron sheet house which had been on the plots on allegations that the two plots belonged to third parties.
3. The plaintiffs came to Court and filed an application under certificate of urgency seeking injunctive orders. On 19th June 2017 the plaintiffs advocate and the advocate for the defendants consented to grant of injunction against the defendants.
4. The applicants have now come to court seeking orders to be enjoined in the suit as defendants because they purchased the same plots being claimed by the first and second plaintiffs and that the first defendant has already signed transfer in their favour. They contend that the injunctive orders are adversely affecting them because the first and second plaintiffs have used the injunction order to move into the suit properties and have started constructing thus blocking access to their respective plots.
5. The plaintiffs/respondents have opposed the application through a replying affidavit sworn on 15th September 2017. They contend that the third respondent bought the suit properties from the first defendant in 1998. The respondents then purchased the suit properties from their previous owner which transaction was sanctioned by the defendant by issuing them with non member certificates. The respondents state that the documents exhibited by the applicants are fraudulent as the two properties were not available for sale. The second defendant attempted to evict them but they filed the present suit where they obtained injunctive orders.
6. I have considered the applicants application as well as the opposition thereto by the respondents. I have also considered the brief submissions by the applicants. The issue for determination herein is whether the applicants should be allowed into this suit as defendants.
7. In considering whether to allow a party into the suit as a defendant, the court has to consider whether the presence of that party seeking to be enjoined is necessary and if it will assist the court to determine the issues in controversy effectually and completely. In the instant case the plaintiffs/respondents and the applicants are both laying claim to the same property. The disputants are both claiming that their ownership to the two properties was sanctioned by the defendants. It is therefore clear that there are common issues between the applicants and the respondents which need to be addressed together. It is therefore imperative that the applicants be enjoined in this suit as defendants. I therefore allow the applicants application as prayed. The plaint shall be amended to reflect the addition of the applicants as third and fourth defendants respectively. The plaint shall be amended within 14 days from the date hereof. The new defendants are at liberty to file their defences and or counter claim if necessary.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 26th day of July 2018.

E.O.OBAGA

JUDGE

In the Presence of :-

Mr Angwenyi for Mr Onyango for 1st and 2nd Interested parties

Mr Leparmarai for Mr Kimamo for 1st, 2nd and 3rd Defendants

Court Assistant: Hilda

E.O.OBAGA

JUDGE