



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 275 OF 2017

JUDITH ACHIENG OMONDI.....PLAINTIFF

VERSUS

JUNE NYAINGO HOSEL.....1ST DEFENDANT

DIRECTOR OF SURVEYS.....2ND DEFENDANT

RULING

(Application to enjoin a 3rd party; Order 1 Rule 15; applicant sued for allegedly encroaching into the plaintiff's land; both plaintiff and applicant having purchased their properties from the proposed 3rd party; applicant stating that she would wish to seek indemnity from the proposed 3rd party; application allowed)

1. The application before me is that dated 20 July 2018, filed by the 1st defendant. It is an application brought pursuant to the provisions of Order 1 Rule 15 of the Civil Procedure Rules, 2010, and the principal order sought is for leave to be granted to the applicant, to issue a 3rd party notice to one Francis Macharia.

2. The suit itself was filed on 30 June 2017 by way of plaint. The plaintiff is the owner of the land parcel Gilgil/Gilgil Block 1/7803 (Kekopey) which is land measuring 0.42 Ha, whereas the applicant, who is sued as the 1st defendant, is the owner of the land parcel Gilgil/Gilgil Block 1/7802 (Kekopey). The two properties abut each other. The plaintiff has averred that she has developed her property and erected a cabin within the boundaries of her land but the applicant complained to her that part of her cabin protrudes and occupies a portion of the applicant's property and demanded its removal. This is what prompted the plaintiff to file this suit seeking inter alia a declaration that no part of her developments have encroached onto the applicant's land and for a permanent injunction to restrain the applicant from interfering with her property. The 2nd defendant is the Director of Surveys.

3. In this application, the 1st defendant has averred that both the plaintiff and herself, purchased their properties from the proposed 3rd party, and that it is the 3rd party who developed the cabin. It is averred that he knows the beacons on the ground very well. She has stated that she wants him enjoined for purposes of claiming indemnity and/or contribution and it is her view that his presence is necessary.

4. I have considered the application. Order 1 Rule 15 provides as follows :-

Notice to third and subsequent parties [Order 1, rule 15.]

(1) Where a defendant claims as against 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 properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and 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.

5. In her application, the applicant has averred that she proposes to seek indemnity and/or contribution from the proposed 3rd party. That being the case, I have no reason to deny the applicant the prayers that she has sought. I see no prejudice to the proposed 3rd party as he will have a chance to defend himself, once the 3rd party notice is filed and served.

6. I therefore allow the application and direct the applicant to file the 3rd party notice within 14 days from today and serve it in the usual manner within 14 days of filing. The costs of this application will be costs in the 3rd party proceedings.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 27th day of September 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -