



IN THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO. 639 OF 2017

VICTOR NDEGWA MBURU & ANOTHER.....PLAINTIFFS

-VERSUS-

RACHEAL WANJIRU KAMATU.....DEFENDANT

-AND-

BENSON R. MURIITHI & ANOTHER.....PROPOSED INTERESTED PARTIES

RULING

1. This is a ruling in respect of a chamber summons application dated 5th February 2018 brought by the Defendant/applicant. The application seeks to enjoin the two proposed interested parties as interested parties in this suit.
2. The dispute in this suit revolves around Plot No. LR 27903/256 (suit property) which is at Embakasi in Nairobi. The Plaintiffs and the defendant are all claiming the suit property on the ground that they purchased the same from the proposed interested parties. The first proposed interested party is the administrator of the estate of his late father who was the registered owner of a larger parcel of land from where the suit property was hived and the suit property had been bequeathed to him. He stated that he sold the suit property to the plaintiffs.
3. The second proposed interested party is a brother to the first proposed interested party. The applicant herein contends that it is the proposed second interested party who sold to him the suit property in the year 2011. The two proposed interested parties have denied that they sold the suit property to the applicant herein. The two have sworn affidavits denying the applicant's claim and have recorded witness statements as witnesses of the plaintiffs.
4. The applicant contends that joinder of the proposed interested parties in this suit will enable the court to effectually and completely adjudicate on the dispute before it as both the applicant and the plaintiffs purchased the suit property from the interested parties and the issues in this suit will not only be as against the plaintiffs and the defendant but also as against the proposed interested parties as well. The applicant further contends that it will be better that the proposed interested parties testify in this case as parties and not as the plaintiffs' witnesses as they are likely to testify in favour of the plaintiffs as they have already been listed as the plaintiffs' witnesses.
5. The proposed interested parties have opposed the applicant's application based on their respective separate replying affidavits sworn on 21st march 2018. The first proposed interested party contends that his joinder in these proceedings will prejudice and expense him as he has already sworn affidavits refuting the applicant's claim as far as purchase of the suit property is concerned. He has already signed a witness statement and he will be testifying in this case and any issues regarding his alleged participation in the sale can be clarified through cross-examination. He contends that the applicant did not name him as a party in her counter-claim and that seeking to join him into the proceedings at this stage will not add any value to the case but only serve to delay the determination of this case.
6. On his part, the second proposed interested party denies the allegation attributed to him by the applicant. He contends that there is no basis for enjoining him in these proceedings as he is already a witness who has sworn affidavits and recorded a statement in this case. His joinder will expense him as he will be required to spend resources to hire a lawyer and he will be required to be present always. He further states that if the applicant wants anything clarified, that will be done through cross-examination. He states that there is no way he would have entered into a sale agreement in respect of the suit property which did not belong to him. The suit property belonged to his brother who is the proposed first interested party.
7. In a further affidavit sworn by the applicant and Joseph Wambugu, the latter gives the history of how the applicant came to purchase the suit property. The applicant on her part contends that the joinder of proposed interested parties would make the proposed interested parties to own what appears to be a fraudulent action of selling one property more than once and that this will help the court determine the dispute effectually and completely. The applicant further contends that cross-examination will not resolve the issue at hand and that the court will

not give adverse orders or sanctions against the proposed interested parties should the court find that the two committed an act of fraud.

8. I have carefully considered the applicant's application as well as the opposition to the same by the proposed interested parties. I have also considered the submissions by the applicant and the proposed interested parties. The only issue for determination in this application is whether the proposed interested parties should be enjoined in these proceedings as interested parties. Before I delve into the issue of whether the proposed interested parties should be enjoined in this suit, I will first deal with who is an interested party in a matter. In the case of **Macademia Nuts Dealers –Vs- Horticultural Crops Development Authority & others [2014] eKLR**, an interested party was described as follows:

“an interested party is a party who has a stake/interest directly in the matter before the court though he or she is not a party to the case. He must be a party who is likely or who will be affected by a decision of the court and he or she is of the view that unless he or she is enjoined (sic) in the matter his or her interest will not be well articulated or protected unless she or he is made a party to ventilate his or her cause”

9. In the case of **Departed Asians Property Custodian Board -Vs- Jaffer Brothers Ltd [1999] 1 EA 55**, it was held as follows:-

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the court is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit not because there is a cause of action against it, but because that party's presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions in the matter. . . .For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one or two things has to be shown. Either it has to be shown that the orders which the plaintiff seeks in the suit would legally affect the interest of that person, and it is desirable for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the court in that suit. Alternatively, a person qualifies (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person”.

10. It is clear from the affidavits filed by the applicant herein as well as submissions that she wants the proposed interested parties joined in this suit so that in the event that the court finds that the two committed fraud, they can be dealt with. The other reason for seeking their joinder is that if they were to testify as witnesses in the case, they would obviously testify in favour of the plaintiffs to her detriment. The concerns of the applicant are not grounds which can be considered in deciding whether to join the proposed interested parties to the suit.

11. As can be seen from the test set out in the Macademia Nuts Dealers case and the Departed Asians Property Custodian Board cases (supra), the ultimate test is whether the court will not pass an effective remedy in the absence of proposed interested parties or the court will not effectually and completely adjudicate the issues in question in their absence. In the instant case the court can effectually and completely adjudicate on the dispute herein without joining the proposed interested parties in the suit. The court can equally pass an effective decree in the absence of the two proposed interested parties.

12. If the court finds that the two proposed interested parties committed any fraud, the court will still determine the issue herein and if need be make appropriate recommendations to the relevant authorities. The proposed interested parties do not have to be parties in order for the court to determine the issues in controversy. I therefore find that the applicant's application lacks merit. The same is dismissed with costs to the proposed interested parties.

It is so ordered.

Dated, signed and delivered at Nairobi on this 27th day of September, 2018

E.OBAGA

JUDGE

In the presence of :

Mr Amalemba for proposed interested parties

Hilda – Court Assistant

E.OBAGA

JUDGE