



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.873 OF 2014

MARY WANGARI WARIUKI (*Suing as the Administratrix of the*

estate of the late NDUNG’U WARIUKI.....**PLAINTIFF**

=VERSUS=

VIRGINIA WANJIKU NDUNG’U.....**1ST DEFENDANT**

FREDRICK NDUNG’U NJOROGE.....**2ND DEFENDANT**

RULING

1. The plaintiff/applicant filed a notice of motion dated 8th September 2015, in which she sought the following orders:-

1. That this Honourable Court be pleased to grant leave to enjoin M/s Equity Bank Limited as a necessary party to this suit.

2. That upon grant of prayer (1) above M/s Equity Bank Limited be directed by this Honourable Court to discharge the twin titles for the suit properties title number LR No. Limuru/Kamirithu/1119 and title number Limuru/Kamirithu/1066 held in their custody and thereafter deposit the same in court subject to the plaintiff releasing and depositing in court the defendants sum of Kshs.2,327,740/= which will go to cater for the bank costs of the failed sale transaction and whatever other sums that are owed by the defendants to M/s Equity Bank Limited.

3. That the costs of this application be provided for.

2. The plaintiff is the administratrix of the estate of her late husband Ndungu Wariuki (deceased) who was the registered owner of **LR No.Limuru/Kamirithu/1119** and **1066** (suit properties). During the lifetime of the deceased, the deceased had entered into a sale agreement in respect of the suit properties with the defendants. The deceased surrendered all completion documents to the defendants which enabled the defendants to have the titles changed into their names after which they charged the suit properties to the proposed interested party. Once the defendants received a loan from the proposed interested party, they paid it as part of the purchase price.

3. The defendants declined to clear the balance and the applicant’s lawyers issued a 21 days’ notice requesting the defendants to complete which the defendants ignored. The applicant then rescinded the agreement and proceeded to file the present suit in which she is seeking a number of prayers. The applicant has now filed the present application in which she contends that if her prayers are not granted, the suit which she has filed will be rendered an academic exercise.

4. The proposed interested party filed a replying affidavit sworn on 29th February 2016 in which it contends that it has no objection to being enjoined as an interested party and further that it has no objection to releasing the titles it is holding as long as the balance it is owed by the defendants together with costs is paid to it.

5. I have carefully considered the applicant’s application as well as the response to the same by the proposed interested party. As the proposed interested party is not opposed to joinder to this suit the only issue for determination is whether, the court should give an order in terms of prayer (2) of the motion dated 8th September 2015. The proposed interested party is holding the titles to the suit property as security for the loan advanced to the defendants. The proposed interested party contends that it is owed about Kshs.247,795/= together with costs and interest by the defendants. The proposed interested party has no problem in releasing the titles if what it is owed is paid. The applicant is not proposing to pay what the defendants owe it. The applicant instead wants to deposit what the defendant had paid the deceased in court. The money to be deposited in court is the one which will be used to pay the proposed interested party. I do not think that the court can order the proposed interested party to deposit the titles in court without payment of what it is owed being cleared. The proposed interested party can

only release the titles upon being paid what it is owed because it is holding the titles as security. I do not therefore find any merit in prayer (2) of the application. I therefore decline to grant prayer (2) and proceed to allow prayer (1) Equity Bank Limited shall be brought into the suit as an interested party. Let the plaint be amended within 14 days to reflect that position. All pleadings shall also be served upon the interested party within 14 days. The interested party shall be at liberty to file defence if need be within 14 days of being served with pleadings. Costs shall be in the cause.

It is so ordered.

Dated, Signed and delivered at *Nairobi* on this *25th* day of October 2018.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time of ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE