



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC. CASE NO. 508 OF 2017

JOSEPH KIMANI WAIGI.....PLAINTIFF

VERSUS

JOHN LOKADE EKAI.....DEFENDANT

AND

ONESMUS KAROKI KIGONGO.....1ST APPLICANT

MILLICENT WANJIKU.....2ND APPLICANT

SUSAN WANGARI.....3RD APPLICANT

MARK NGURE.....4TH APPLICANT

RULING

1. On 22/11/2017, Onesmus Karoki Kigongo, Millicent Wanjiku, Susan Wangari and Mark Ngure brought an application on behalf of unnamed other shareholders of Miharati Development Company Limited seeking the following orders:

- 1. That this application be certified urgent and be heard exparte in the first instance.***
- 2. That there be a stay of execution of the orders issued herein on 22nd November 2017 and in particular the eviction of the defendant until this matter is heard and determined.***
- 3. That the orders made herein on 22nd November, 2017 in so far as they direct the eviction of the defendant be set aside***
- 4. That Onesmus Karoki Kigongo, Millicent Wanjiru, Susan Wangari and Mark Ngure Mwai be joined as defendants in this suit on their own behalf and as representatives of other members and shareholder of Miharati Development Company Limited before this matter proceeds any further***
- 5. That Miharati Development Company also be enjoined as a defendant***
- 6. That this honourable court do make such orders and give such directions as will meet the ends of justice.***
- 7. That the costs of this application be in the cause.***

The application was supported by an affidavit sworn on 22/11/2017 by Onesmus Karoki Kigongo.

2. The applicants' case is that together with the defendant, John Lokade Ekai, they are the elected representatives of some other unnamed shareholders of Miharati Development Company Limited. The group represented by this applicants consists of about 80 persons who purchased shares in Miharati Development Company Limited and were issued with share certificates and shown plots within Land Title Number Nairobi/Block/126/545 which is the subject matter of the suit. They are unable to join the suit as Miharati Development Company Limited because they are not directors of the Company. The orders made on 22/11/2017 are adverse to them as they have the effect of evicting them from the suit property without them being parties to this suit. They purchased plots within the suit land through Miharati Development Company Limited.

3. The application is opposed by the plaintiff. The case of the plaintiff is that there is no credible evidence tendered to show that the

applicants have an interest in the suit property. He purchased the suit property in 2010 from one Gerald Ndirangu Kariuki after proper due diligence. Upon payment of purchase price, the property was conveyed to him and he was issued with a certificate of title. In 2016, he noticed that some strange activities were happening on the suit property, involving encroachment by a dubious individual. This prompted him to move to court in 2017 against the defendant.

4. The application was canvassed through written submissions. Mr. Njuguna, counsel for the applicants, submitted that Miharati Development Company Limited sold plots to the applicants and the applicants took possession of the plots within the suit property. Relying on Order 1 rule 3 of the Civil Procedure Rules and the case of **Central Kenya Limited v Trust Bank Limited and 84 others (2002) eKLR** he argued that the applicants are necessary parties for the just determination of the suit.

5. Mr Odongo, counsel for the plaintiff submitted that whereas the applicants allege that they bought portions of plots in the suit property through Miharati Development Company Limited, they had not exhibited any evidence to show that the suit property belonged to the Company at the time they purportedly paid money to that company. He argued that joining the applicants as parties to this suit would cause unnecessary delay in the finalization of this suit.

6. I have considered the application together with all the materials placed before the court. I have also considered the legal framework and the relevant jurisprudence on the key questions in the application. Two key questions fall for determination. The first question is whether the applicants and or Miharati Development Company Limited are necessary parties for the effectual and complete adjudication and settlement of all questions in this suit. The second question is whether a proper basis has been laid for the setting aside of the orders made on 22/11/2017.

7. The legal framework on joinder of parties to a suit are contained in Order 1 rule 10 of the Civil Procedure Rules which provides as follows:

1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been substituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.

2) 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.

3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.

4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

8. The test to be applied in determining whether or not to admit an applicant as a party to ongoing proceedings is whether the presence of that party before the court would be necessary in the court's effectual and complete adjudication and settlement of all questions involved in the suit.

9. In the present suit, the plaintiff initiated proceedings against the defendant contending that the defendant had encroached onto his property. The interlocutory orders he obtained relate to the defendant. The defendant has not challenged those orders. The plaintiff has not at this stage made any adverse claim against the applicants. The orders he obtained are not directed against the applicants.

10. In my view, if the applicants or Miharati Development Company Ltd feel that they have a valid interest in the suit land, they have every right to bring a suit to ventilate their claim. I do not see any basis for making them parties to this suit when this suit and the interlocutory orders obtained herein are not directed against them.

11. Similarly, I do not see any basis upon which the applicants seek to set aside orders that are not directed against them. For the reason that the orders made on 22/11/2017 are not directed against the applicants, I decline to grant a review of the orders.

12. The upshot is that the notice of motion dated 22/11/2017 is dismissed for lack of merit.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF NOVEMBER 2018.

B M EBOSO

JUDGE

In the presence of:-

Mr Njuguna Advocate for the applicant

