



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LANDS COURT AT MACHAKOS**

**E.L.C. CASE NO.18 OF 2014**

**KENYA AFRICAN NATIONAL TRADERS &**

**FARMERS UNION (KANTAFU)**

**.....PLAINTIFF/RESPONDENT**

**VERSUS**

**KOMAROCK RANCHING &**

**FARMING CO-OPERATIVE LIMITED .....**

**....DEFENDANT**

**R U L I N G**

This Ruling is in respect to the Application by the intended 2<sup>nd</sup> Defendant dated 28<sup>th</sup> October, 2016. In the Application, the Applicant is seeking for the following orders.

- (1) THAT this Honourable Court do and hereby grant leave to Optiven Limited to be joined as a defendant to the suit herein**
- (2) THAT the Plaintiff be ordered to amend the Plaint accordingly and serve the Applicant with Plaint and all Applications filed herein.**
- (3) THAT this Honourable Court be pleased to review the inhibition orders issued on 1<sup>st</sup> day of September, 2016.**
- (4) THAT there be a stay of orders granted by this Honourable Court on the 27<sup>th</sup> day of October, 2016.**
- (5) THAT the costs of this application be in the cause.**

The Application is premised on the grounds that the issues to be determined in the suit directly affects the Applicant; that the inhibition orders were granted on non-disclosures of facts by the Plaintiff and that the Applicant is the registered owner of all the plots out of sub-division Number **Donyo Sabuk/Komarock Block 1/599**.

The Director of Optiven Limited deponed that on 7<sup>th</sup> May, 2014, the Applicant entered into a sale agreement to purchase from the Defendant the suit property; that the suit property was subsequently registered in favour of the Applicant and that in the course of registration of some titles, the Applicant was informed that an inhibition order had been issued in this suit.

According to the Applicant, after purchasing the suit property from the Defendant, it proceeded to subdivide the land into 287 plots and has sold and transferred most of them.

The Defendant supported the Applicant's Application.

In response to the Applicant's Application, the Plaintiffs Chairman deponed that while instituting the suit, the Applicant was unknown to them; that the Plaintiff's interest in the suit property takes precedence over the claim by the Applicant and that in order to preserve the suit property, the inhibition orders that were issued by the court should remain in force.

The Plaintiff's and the intended Defendant's advocates appeared before me and made oral submissions. I have considered those submissions together with the authorities.

The Plaintiff filed this suit on 11<sup>th</sup> March, 2014 claiming that it is the rightful owner of parcel of land Number **Donyo Sabuk/Komarock Block 1/599**.

The intended 2<sup>nd</sup> Defendant has admitted that it purchased the suit property on 7<sup>th</sup> May, 2014, a few months after the Plaintiff's filed this suit.

Indeed, by the time the Defendant sold the suit property to the intended 2<sup>nd</sup> Defendant, it was aware of the pendency of this suit, its advocate having entered appearance on 27<sup>th</sup> March, 2014 and filed a Defence on 8<sup>th</sup> April, 2014. It is therefore obvious that the Defendant sold the suit property during the pendency of this suit.

Considering that the judgment of this court will not only affect the Defendant, but any other party that currently has a direct interest in the suit property, and in view of the fact that the Applicant has exhibited evidence showing that it purchased the suit property from the defendants, albeit during the pendency of the suit, I shall allow the Applicant to join in these proceedings to enable the court effectually and completely adjudicate over the dispute.

Of course, the Applicant's participation in the suit might not add any value considering that its claim is grounded on the fact that it purchased the suit property from the Defendant. However, having shown that it will be affected by the outcome of the suit, they should be allowed to participate in the proceedings in whichever manner they deem fit.

The order of inhibition that has been issued by this court cannot be lifted considering that the court ought to make a determination as to who between the Plaintiff and the Defendant is the lawful owner of the suit property.

To prevent any further dealings in the suit property, the ongoing transactions should stop until such a time when this court shall make its decision.

For those reasons, I allow the Application dated 28<sup>th</sup> October, 2016 in the following terms:

**(a) The Plaintiff to amend its Complaint and serve Optiven Limited with the Complaint and all the Applications filed herein.**

**(b) The Applicant to file and serve its Defence on all the parties within 14 days from the date of service of the amended Complaint.**

**(c) Each party to bear its own costs.**

**It is so ordered.**

Dated, Signed and Delivered at **Machakos** this 27<sup>th</sup> day of **January, 2017**.

**O. A. ANGOTE**

**JUDGE**