



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 276 OF 2015

MUHAMMAD NISAR AHMED.....PLAINTIFF

VERSUS

THE DISTRICT LAND REGISTRAR, NAKURU.....1ST DEFENDANT

HON. SAMUEL ARAMA.....2ND DEFENDANT

AND

MODERN DISTRIBUTORS LTD.....PROPOSED INTERESTED PARTY/APPLICANT

RULING

(application to be enjoined as interested party; plaintiff and 2nd defendant disputing ownership over certain land; applicant claiming not to have sold the property to the plaintiff as contended by the plaintiff but that it sold the property to another person; not necessary for the applicant to be enjoined as a party to the suit; no prejudice to applicant who is free to file a separate suit; application dismissed)

1. This suit was commenced by way of plaint filed on 5 October 2015. The plaintiff has sued two persons, that is, The District Land Registrar, Nakuru, and Honourable Samuel Arama. In his case, the plaintiff has pleaded that he is the owner of the land parcel Nakuru Municipality Block 6/95 measuring 0.0557 Ha, having purchased the same from Modern Distributors Limited on 30 July 2010. He has pleaded that he purchased this property contemporaneously with a portion of the land parcel Nakuru Municipality Block 6/94 measuring 0.133 Ha. These parcels of land are said to have been adjacent to the Railway line, and consent of the Kenya Railways Corporation was obtained for the transfer of the land. He has pleaded that on 3 September 2015, the 2nd defendant forcibly gained ingress into the plaintiff's said properties, claiming to have purchased them from a third party and asserting to have procured title for himself. It is the plaintiff's case that the title held by the 2nd defendant is fraudulent. In the suit, the plaintiff seeks inter alia a declaration that he is the registered proprietor of the land parcel Nakuru Municipality Block 6/95, cancellation of the title of the 2nd defendant, and a permanent injunction against the 2nd defendant.

2. In his statement of defence, the 2nd defendant inter alia pleaded that the plaintiff never purchased the land parcel Nakuru Municipality Block 6/95 (hereinafter "the suit property") from Modern Distributors Limited as claimed. He asserted that it is he (the 2nd defendant) who owns the suit property having purchased it from one Mustafah Yusuf Ratemo on 3 August 2015.

3. Through an application dated 2 November 2015, Modern Distributors Limited have applied to be enjoined to these proceedings as interested party. The supporting affidavit is sworn by Justus Ong'au, a director of the company. He has deposed inter alia that the company was the registered owner of the land parcels Nakuru Municipality Block 6/94 and 95. He has stated that on 30 July 2010, the company entered into an agreement to sell the properties to one Nadeem I. Mohammed, the sale agreement being handled by the law firm of M/s Sheth & Wathigo Advocates. He has deposed that at no time did the company enter into a sale agreement with the plaintiff, and he has refuted the sale agreement relied upon by the plaintiff. He has stated that if enjoined, the company would wish to have determined several issues, inter alia, whether the agreement displayed by the plaintiff is forged and whether the two properties mentioned should revert to the interested party.

4. The application is not opposed by the 1st and 2nd defendants. However, the plaintiff has opposed it by filing Grounds of Opposition. Inter alia, it is argued that the remedy of the applicant, if any, lies in the filing of an independent suit against whoever he believes has aggrieved him.

5. I have considered the submissions of both Mr. Wambeyi for the applicant and Mr. Kahigah for the plaintiff and the various

authorities relied by them.

6. What is before me is an application for joinder as interested party. In his submissions, Mr. Wambeyi submitted that the application is premised upon Order 1 Rule 10 which provides as follows :-

10. Substitution and addition of parties [Order 1, rule 10.]

(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 instituted 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.

7. Mr. Wambeyi specifically narrowed down to Order 1 Rule 10 (2), which as may be seen above, permits the court to order to be added to the suit, a person, "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." It follows that the court must be convinced that it cannot properly determine the questions raised by the litigants in the suit, without the intended interested party being present. If the court is of the view that it can fully determine the questions in the suit without the intended interested party being a party, then there is no need to enjoin such person into the case. The court must thus evaluate the nature of the case before it, the issues that need to be tried, and the remedies that the parties seek.

8. In our case, the main protagonists are the plaintiff and the 2nd defendant. They both claim ownership of the land parcel Nakuru Municipality Block 6/95. The plaintiff claims that he purchased it from the intended interested party whereas the 2nd defendant avers that he purchased the same property from one Yusuf Mustafa Ratemo. In this application, the intended interested party admits to have sold the property, but to one Nadeem I. Mohammed and not to the plaintiff, who is Muhammad Nisar Ahmed. Well, if the applicant admits to have sold the property, I wonder what claim or stake, it still wants to maintain over the property. If the intended interested party wants to claim back the property, then the correct path to take is to file an independent suit and seek whatever remedies it deems appropriate against such parties it considers to be necessary.

9. In my view, the addition of the intended interested party into this suit, is not necessary for this court to determine the dispute between the plaintiff and the 2nd defendant and the application must therefore fail. I see no prejudice to the intended interested party as the avenue of filing a separate suit is available to it.

10. For the above reasons, I dismiss this application with costs to the plaintiff.

11. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 16th day of February 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :

Mr. Maina holding brief for Mr. Wambeyi for the intended interested party/applicant

Ms. Gachanja holding brief for Mr. E.M Juma for the 2nd defendant

No appearance on part of M/s Mirugi Kariuki & Co. for plaintiff

No appearance on part of the 1st defendant

Court Assistant : Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU