



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 82 OF 2015

DAMARIS WANJIRU NGANGAPLAINTIFF

VERSUS

LOISE NAISIAE LEIYAN1ST DEFENDANT

KENYA COMMERCIAL BANL LIMITED2ND DEFENDANT

RULING

(Application to enjoin a 3rd party; defendant seeking indemnity on purchase price; part of purchase price paid to the intended 3rd party; application allowed)

1. This is an application filed by the 1st defendant on 13 September 2016 essentially seeking leave to enjoin one Victor Mahonga Ayumba as a third party in these proceedings. The backdrop is that this suit was commenced by way of plaint on 23 March 2015. The case of the plaintiff is that by an agreement dated 4 February 2014, the 1st defendant agreed to sell to the plaintiff the land parcel Miti Mingi/Mbaruk Block 8/2367 (Kianjoya D). At the time of sale, the property was charged to Kenya Commercial Bank, the 2nd defendant. The plaintiff avers that she paid the whole purchase price but that the 1st defendant failed to clear her loan with the bank. In the suit, the plaintiff wishes to have an order of specific performance and in the alternative refund of the market value of the suit property.

2. In her defence, the 1st defendant pleaded inter alia that the sale of the property was subject to issuance of the consent of the Land Control Board and none was given hence the transaction is null and void.

3. In this application, the 1st defendant has repeated the argument that the transaction between herself and the plaintiff is null and void for want of consent of the Land Control Board and that the plaintiff is only entitled to a refund of the monies paid. She has averred that the sum of Kshs. 2,230,000/= was paid to and received by Victor Mahonga Ayumba. She has stated that she wishes to claim indemnity against the said Victor Mahonga Ayumba.

4. It is not very clear at this stage of the proceedings why the said Victor Mahonga Ayumba was involved in the transaction between the plaintiff and defendant and why some money was paid to him. But it does appear that both plaintiff and 1st defendant did tender part of the purchase price to him. It may be that the defendant may be entitled to claim indemnity against the said Victor depending on how this suit goes. I will give the 1st defendant the benefit of doubt and permit him to enjoin the intended 3rd party. I see no prejudice to the 3rd party, for if he will be of the feeling that he ought not to have been enjoined, he may apply to be discharged.

5. Given the above, I allow this application. The 1st defendant may issue a 3rd party notice against Victor Mahonga Ayumba. I direct that the 3rd party notice be filed forthwith, and no later than 14 days, and be served promptly on the said Victor Mahonga Ayumba.

6. I make no orders as to costs.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 15th day of February 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Ms. Mugweru for the plaintiff

No appearance on the part of M/s Echessa Bwire & Co. for the applicant/1st defendant

No appearance on the part of M/s Mburu Maina & Co. Advocates for the 2nd defendant

Court Assistant : Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU