



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC CASE NO. 700 OF 2014**

**NDWIGA WAINAINA & 11 OTHERS ..... PLAINTIFF**

**-VERSUS-**

**COUNTY GOVERNMENT OF EMBU ..... RESPONDENT**

**AND**

**ALEX TONY GITONGA NJERU & 19 OTHERS .....PROPOSED INTERESTED PARTIES  
APPLICANTS**

**RULING**

1. This ruling is in respect of the notice of motion dated **17th December, 2015** in which the proposed interested parties (applicants) seek to be enjoined to this suit. The applicants also seek to transfer this suit to Embu High Court to be consolidated with ELC Case No. 332 of 2015 where they have been enjoined as interested parties.
2. The application is premised on the grounds on its face and is supported by the affidavit of Alex Tonny Gitonga Njeru where it is, *inter alia*, contended that the applicants were not parties to this matter; that orders adverse to their interest were made in this matter; that they only got to know of the orders issued in this matter when the plaintiffs sought to effect them and that when they learnt about the orders issued in this court they filed a suit at Embu Law Courts to wit, Embu ELC No.332 of 2015 where orders dissimilar to the ones issued in this matter have been issued.
3. The application is opposed through the affidavit of Ndwiga Wainaina (replying) in which the history of the dispute concerning the suit property is given and contended that the interested parties cannot be enjoined to this suit because a final judgment has been delivered in this matter.
4. Concerning the plea for transfer of this suit to Embu High Court to be consolidated with the suit pending before that court, it is contended that acceding to that request would be tantamount to aiding the proposed interested parties and the Karukenya family to continue with their abuse of court processes. Besides, it is contended that the interested parties/ applicants lack *locus standi* to request for transfer of this suit to Embu High Court.

**Analysis and determination**

5. It is common ground that a final judgment was issued in this matter. In this regard, the court record shows that on 5th day of June, 2015 this court allowed the plaintiff/respondent's application dated 9th

December, 2014 in which the plaintiff's sought to *inter alia*, execute the orders issued in their favour on 18th July, 2014 by evicting the respondents and all persons in occupation of the suit property to wit, Gature/Nembure/3072.

6. It is clear that the order for eviction issued in this matter extended to the proposed interested parties as persons in occupation of the suit property.

7. Judgment in this matter having been delivered, this court became functus official. The only way this court can get seized of the matter is through an application for setting aside of its orders or through execution proceedings as contemplated by **Order 22 Rule 82** of the Civil Procedure Rules.

8. The application herein not being an application for opening the concluded matter or for review of the orders of this court, I find and hold that this court lacks jurisdiction to entertain the application. If anything, it has not been demonstrated the purpose for which joinder is sought for the court to determine whether or not a case for the joinder has been made.

9. After all, no prejudice will be suffered by the proposed interested parties because under **Order 22 Rule 82** aforementioned the law provides a window for the applicants to address any issues they may have concerning their interest in the suit property . In this regard see the said provision of law which provides as follows:

**“(82)(1)Where the holder of a decree for possession of immovable property or purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction.**

**(2) The court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.”**

10. The application herein appears to have been misconceived and/or misadvised because at the time it was filed there was no suit pending in this court on which the orders sought could hinge.

11. As the applicants have failed to make a case for being enjoined to this suit, I need not consider the prayer for transfer of the suit because the prayer cannot issue in favour of people who are none parties to the suit.

12. The upshot of the foregoing is that the motion herein is lacking in merits. I, consequently, dismiss it with costs to the plaintiffs/respondents.

**Dated, signed and delivered in open court at Nyeri this 27th day of March, 2017.**

**L N WAITHAKA**

**JUDGE**

In the presence of:

Ms Ann Thingu for the applicants

N/A by Wangari & Co. Advocates

N/A by Eddie Njiru & Co. Advocates,

N/A by Joe Gathungu & Co. Advocates

Court clerk - Esther