



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 124 OF 2012

ALICE CHEMANDAN SIYOI..... PLAINTIFF

VERSUS

JOEL KIPTOO NG'ENO.....1ST DEFENDANT

RODAH CHEBET.....2ND DEFENDANT

FRANCIS KIPRONO NG'ENO.....3RD DEFENDANT

BRIAN KIPTANUI..... 4TH DEFENDANT

AND

JOHN THUO GAKURU.....APPLICANT

RULING

1. The applicant filed an application dated 19/1/2017 seeking to be enjoined as an interested party in this suit. The application was made on the basis that he had purchased a portion of the suit land and charged the same to the Kenya Commercial Bank to secure a loan which he was currently repaying or servicing. He urged that in view of the orders sought by the plaintiff it would be just and fair that he be enjoined in the suit lest he be condemned unheard.

2. In opposition to the application the plaintiff/respondent states in her replying affidavit that the applicant became the registered owner of a portion of the suit land while this suit was still pending and after the then parties had agreed to maintain the status quo in the year 2016. She stated that the said registration is against the doctrine of *lis pendens* and is aimed at frustrating the fair determination of this suit.

3. **Order 1 Rule 10 (2)** envisages joinder of a party, either upon the application of a party or on the court's own motion, whether as plaintiff or defendant, or as one 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. There is room therefore, for joinder of a necessary party who is neither plaintiff nor defendant, if his presence before court may be necessary in order to enable the court to "effectually and completely" to adjudicate upon and settle all questions involved in the suit.

4. Does the applicant in this suit fall within the scope of a party whose presence is necessary (necessary party) envisaged by **Order 1 Rule 10(2)**? First, the order seems to allow the joinder of a necessary party by court even without the application of either the plaintiff or the defendant, which in my opinion may be interpreted to mean that even an application by a non-party to be made a necessary party, may be

entertained. Secondly for joinder to be made the involvement of an applicant has to be necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the suit”.

5. The question as to validity of the applicant’s title, will necessarily be an issue in the suit at the hearing if indeed it was carved out of the suitland. Registration of the applicant as owner and the creation of third party rights which at first glance may appear to be adverse to the plaintiff’s claim or interest are issues that relate to the questions involved in the suit.

6. The applicant however seeks to be enjoined as an interested party and not as a necessary party or as a defendant or a plaintiff. This in my opinion does not mar his chances of participating in the proceedings. I would consider an interested party as a person who merely has some interest in the subject matter of the suit, and a necessary party as one whose presence is crucial for the determination of all questions involved in the suit. The applicant has met the higher threshold required by a “necessary party”. Does that make him entitled to be enjoined as a “necessary party? As his application seeks that he be joined as an “interested party” the court will grant prayer No. 1 of the application dated 19/1/2017.

7. I hereby order that the applicant do file and serve his defence, if any within 14 days from the date hereof to which the plaintiff should file a reply, if necessary within 14 days of service. The costs of the application to be in the cause.

Signed, date and delivered at Kitale on this 17th day of March, 2017.

MWANGI NJOROGE

JUDGE

Ruling read in open court.

In presence of:

Mr. Bororio for the Applicant

N/A for the Respondent

Court Assistant

MWANGI NJOROGE

JUDGE

17/3/2017