



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 7 OF 2012(consolidated with ELC No. 814 of 2013)

**BESNSON RITHO MURIITHI (suing as the administrator
of the estate of Joseph Maingi Muriithi).....PLAINTIFF**

VERSUS

GEORGE NGUGI KARUNGO.....1ST DEFENDANT

GEORGE OGALO ONER.....2ND DEFENDANT

GEONER SYSTEMS LIMITED.....3RD DEFENDANT

AND

STEPHEN MAINGI MURIITHI.....1ST INTERESTED PARTY

JANE HIUKO MURIITHI.....2ND INTERESTED PARTY

CHARLES MUGAMBI GITHENYA.....3RD INTERESTED PARTY

REBECCA WANJIRU MURIITHI.....4TH INTERESTED PARTY

ELVIS MUREITHI WAMAE.....5TH INTERESTED PARTY

SAMUEL KAMAU WAMAE.....6TH INTERESTED PARTY

STANLEY GATHURA NJENGA.....7TH INTERESTED PARTY

LEONARD KAMENYA MBURU & OTHERS.....8TH INTERESTED PARTY

JECINTA NYAWIRA KINGI.....9TH INTERESTED PARTY

FERDINAND WAITITU.....10TH INTERESTED PARTY

RECHO NJOKI WAINAINA.....11TH INTERESTED PARTY

JOHN W. WANJOHI.....12TH INTERESTED PARTY

WILSON NDUNGU KAMOMOE.....13TH INTERESTED PARTY

WILKA GENERAL MERCHANTS.....14TH INTERESTED PARTY

SUSAN NJOROGE.....PROPOSED 15TH INTERESTED PARTY

DAVID MUNGAI MWAURA....PROPOSED 16TH INTERESTED PARTY

RULING

I have before me two applications both brought by the 1st defendant. In the applications, the 1st defendant has sought orders for the joinder of the proposed 15th and 16th interested parties in the suit and orders of injunction restraining them from interfering with the parcels of land known as L.R No. 27903/263(“Plot No. 263) and L.R No. 27903/388(“Plot No. 388”) respectively. In the Notice of Motion application dated 26th April 2016, the 1st defendant has sought leave to join Susan Njoroje (hereinafter referred to as “the proposed 15th interested party”) in this suit as the 15th interested party. The 1st defendant has also sought an order restraining the proposed 15th interested party from entering into, alienating, and developing or in any way interfering with Plot No. 263. In the second application which was brought by way of Notice of Motion dated 9th May 2016, the 1st defendant has sought leave to join David Mungai Mwaura (hereinafter referred to as “the proposed 16th interested party”) in this suit as the 16th interested party. The 1st defendant has also sought an injunction restraining the proposed 16th interested party from entering into, alienating, developing or in any way interfering with Plot No. 388.

The two applications were brought on the same set of facts which were set out in separate affidavits sworn by the 1st defendant on 26th April 2016. In the said affidavits, the 1st defendant stated that, on 25th February 2013, this court issued orders restraining the plaintiff from interfering with Plot No. 263 and Plot No. 388 (hereinafter together referred to as “the suit properties”). The 1st defendant averred that the proposed 15th and 16th interested parties who claimed to have purchased the suit properties from the plaintiff trespassed on the said properties and began constructing houses thereon in outright disobedience of the said court order which was issued herein. The 1st defendant stated that the said actions by the plaintiff and the proposed interested parties were intended to defeat the orders which were issued herein and should be stopped by the court. The 1st defendant contended that the joinder of the proposed interested parties will serve the interest of justice as it will allow the said parties to present their cases for fair determination and will also make them bound by the orders which would be issued herein.

The 1st defendant’s applications were opposed by the plaintiff through a replying affidavit sworn on 2nd June 2016. The plaintiff denied the allegations contained in the affidavits filed in support of the said applications and contended that the applications were intended to delay the disposal of the main suit. The plaintiff contended that if indeed the orders which were issued by this court were disobeyed by any party, the remedy open to an aggrieved party was to file an application for contempt.

When the applications came up for hearing on 11th October 2016, the court was informed that the 2nd and 3rd defendants as well as the 8th, 9th and 11th interested were not opposing the applications. Mr. Kimani learned counsel for the 1st defendant submitted that on 25th February 2013, the court issued a moratorium on development of the properties in dispute in this suit and that from the order of the court, Plot Numbers LR 27903/238, 263, 312 and 313 were sold by the plaintiff to a company known as Next Technologies Ltd. He submitted that Plot No. 388 was included in the court order which was issued on 26th July 2013 and that the proposed 16th interested party was carrying out development on the said plot. Mr. Kimani submitted that the joinder of the 15th and 16th interested parties to the suit was being sought to enable the said parties inform the court the basis on which they were carrying out construction on the suit properties.

Counsel submitted that the plaintiff had not responded to the issues raised in the 1st defendant's applications.

In response, Mrs. Kariuki who appeared for the plaintiff contended that according to the court records, the 1st defendant owned 62 plots out of 590 plots which are in dispute in this suit. Mrs. Kariuki submitted that in reality, the 1st defendant owned about 200 plots. She submitted that the 1st defendant had brought people to claim interest in the disputed properties since he could not justify how he acquired the said properties. Counsel submitted that some of the people alleged to own the disputed properties were fictitious and that the plaintiff had annexed affidavits of some of them denying that they owned plots in Embakasi. Mrs. Kariuki submitted that Plot No. 263 was sold to Next Technologies Ltd. on 25th February 2013 and that the said company had not complained about the construction which the 1st defendant was complaining about. The plaintiff contended that the 1st defendant was using the court for ulterior motives and that the injunction sought should be denied. Mrs. Kariuki submitted further that the 1st defendant was not deserving of the equitable relief he was seeking since he had continued to sell the disputed properties despite the existence of court orders stopping any sale.

The issues arising for determination in the two applications are whether joinder of the proposed 15th and 16th interested parties to the suit herein should be allowed and secondly, whether a temporary injunction should issue against the proposed interested parties in respect to the suit properties. The law on amendments of pleadings and joinder of parties is well settled. It is trite law that applications for amendment of pleadings, or joinder of parties should be liberally allowed. The Court of Appeal in the case of Peter Nganga Muiruri vs. Housing Finance Co of Kenya Ltd & 2 others (2016) eKLR stated the law on amendment as follows:-

“As a general rule, amendment of pleadings and joinder of parties is permitted by law and it can be done at any stage of the pleadings. Such amendment should be allowed freely, if the party sought to be joined is necessary in order to enable the court to efficaciously, effectively and completely adjudicate upon, and settle all questions involved in the suit. However, joinder of parties may be refused where such joinder will lead to confusing or clouding issues; the party being joined is unnecessary; unnecessary delay will result; or no cause of action whatsoever arises against the party intended to be joined. The Court will also have to consider if the amendment or joinder, as the case may be, will result in prejudice or injustice to the other party which cannot be adequately compensated for in costs. (See, Beoco Ltd .vs. Alfafa Laval Co. Ltd [1994] 4ALL ER.464)”

See also, Central Kenya Ltd vs. Trust Bank and 4 others, CA No. 222 of 1998. The ownership of Plot No. 263 and Plot No. 388 (the suit properties) are in dispute in this suit. Plot No. 263 is said to be owned by a company known as Next Technologies Ltd. to whom the same was sold by the plaintiff. The 1st defendant has not sought the joinder of Next Technologies Ltd. to the suit. Instead, he has sought to join in the suit, the proposed 15th interested party, Susan Njoroge. The 1st defendant has not placed any material before the court showing the interest of the proposed 15th interested party in Plot No. 263. There is no evidence that the plaintiff sold Plot No. 263 to the proposed 15th interested party. There is also no evidence that there is any construction being carried out on Plot No. 263 and that if there is, that the same is being carried out by the proposed 15th interested party. I am unable to see in the circumstances how the joinder of the proposed 15th interested party would assist the court in determining the issues raised in this suit. I cannot also see any basis on which this court can issue injunction against the proposed 15th interested party at the instance of the 1st defendant.

With regard to Plot No. 388, the order of 26th July 2013 restrained the plaintiff from interfering with the 1st defendant's possession of the same. The 1st defendant on the other hand was restrained from among others, selling, transferring or undertaking any further construction on the suit property. The 1st defendant has claimed that the proposed 16th defendant is carrying out construction on Plot No. 388 and that he claims to have purchased the same from the plaintiff. There is evidence before the court that construction

is being undertaken on Plot No. 388. The proposed 16th defendant was served with the application herein but did not respond to the same. Instead, the response came from the plaintiff who denied that he had sold the said plot to the proposed 16th interested party and that there was any construction being undertaken on the said property. The court order of 26th July 2013 presupposed that Plot No. 388 was in the possession of the 1st defendant. The 1st defendant was restrained from carrying out any construction on the said plot. It is apparent from the material before the court that Plot No. 388 is now in the possession of a third party and that the said third party is carrying out construction on the same contrary to the order of the court. On the material before me, I have no reason not to accept the 1st defendant's contention that the said third party is the proposed 16th interested party. I am satisfied from the foregoing that the 1st defendant has made out a case for the joinder of the proposed 16th interested party as a party to these proceedings. In respect to the prayer for temporary injunction, I am also satisfied that a case has been established to warrant the grant of the injunction sought against the proposed 16th interested party. In the case of Nguruman Limited vs. Jan Bonde Nielsen & 2 others (2014) Eklr., as follows:-

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained...” All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation.”

From what I have set out above, the 1st defendant has discharged this burden.

In conclusion, I find no merit in the 1st defendant's application dated 26th April 2016. The same is dismissed with no order as to costs. I however find the application dated 9th May 2016 well founded. The same is allowed in terms of prayers 3 and 4 thereof save that David Mungai Mwaura is joined in the consolidated suit as 15th interested party. The 1st defendant shall have the cost of this application.

Delivered and Signed at Nairobi this 28th day of April, 2017.

S. OKONG'O,

JUDGE.

In the presence of:-

Mr. Nyanyuki h/b for Jillo	for Plaintiffs
Mr. Kimani	for 1 st Defendant
Mr. Kamau h/b for Nyangweso	for the 2 nd Defendant
Mr. Kimani h/b for Nyangweso	for the 3 rd Defendant
Mr. Wambua for 8 th	interested parties
Kajuju	Court Assistant