



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 217 OF 2015

ESTHER WATIRI..... PLAINTIFF

VERSUS

JOSIAH MWANGI.....1ST DEFENDANT

JOHN NDAIGA.....2ND DEFENDANT

JOSPHAT MACHARIA.....3RD DEFENDANT

COUNTY GOVERNMENT OF NAIROBI.....INTENDED NECESSARY PARTY

RULING

There is a dispute between the Plaintiff and the Defendants over a parcel of land known as Plot No. 5/146 (herein after “the suit property”). The suit property was allocated to the Plaintiff on 4th March 1992. The Plaintiff has claimed that on a date the details of which are not given in the pleadings, the Defendants encroached on the suit property and started putting up a structure thereon after destroying the structures that the Plaintiff had put up on the property earlier. The Plaintiff has contended that she has over the years been paying ground rent and rates to the Nairobi City Council and subsequently to its successor, Nairobi City County (hereinafter “the interested party”). The Plaintiff has contended that the interested party has confirmed that the suit property exists.

From the record, the Defendants have not filed their statement of defence. It is therefore not yet clear as to the issues arising between the Plaintiff and the defendants which the court will be called upon to determine. What I now have before me is the Plaintiff’s application brought by way of Notice of Motion dated 28th April 2015 seeking an order that the interested party be joined in these proceedings as “necessary party.” The application was brought on the grounds that the suit property was allocated to the Plaintiff by the interested party and that the interested party would assist the court in determining the dispute over the ownership of the same. The application was opposed by the interested party through a replying affidavit sworn by its legal services director, KarisaIha on 21st May 2015. The interested party has contended that its joinder in this suit is unnecessary because the information which the Plaintiff may require from the interested party can be availed by the interested party without being made a party to the suit.

The application was argued by way of written submissions. I have considered the application together with the replying affidavit in opposition hereto. I have also considered that the submissions by the respective advocates for the parties. The Plaintiff’s application was brought under Order 1 Rule 10 (2) of the Civil Procedure Rules. That rule gives the court power at any stage of the proceedings to order among others that the name of any person who ought to have been joined in a suit whether as a Plaintiff

or Defendant or whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions in a suit be added. The principles upon which this court exercises its discretion in applications under Order 1 Rule 10(2) of the Civil Procedure Rules were set out in the cases of Technomatic Limited T/A Promopack Company vs. Kenya Wine Agencies Ltd. & Another (2014) eKLR and Meme vs. Republic (2004) KLR 637 which were cited by the Plaintiff in support of her application.

The onus was upon the Plaintiff to establish a case for the joinder of the interested party to this suit. I am in agreement with the interested party that a case has not been made out to warrant its joinder as a party to this suit. There is no dispute between the Plaintiff and the interested party. The Plaintiff has not convinced this court that the addition of the interested party as a party to this suit would enable this court to effectively and completely adjudicate the issues raised in this suit. As I have mentioned above, it is not even clear at this stage what issues the court will be called upon to determine in this suit. I am in agreement with the interested party that if it is the evidence concerning the ownership of the suit property which the Plaintiff would require the interested party to provide, that cannot warrant the joinder of the interested party to the suit herein. The Plaintiff would be able to obtain such information by serving the interested party with witness summons to appear in court to testify on the issue.

A part from the joinder of the interested party to the suit, the Plaintiff has also sought an order that the status quo be maintained. I have noted from the record that the Plaintiff had filed a Notice of Motion application for injunction on 13th March 2015. That application is still pending hearing and determination. The Plaintiff has not put forward any valid grounds for the order of status quo sought in the present application. The prayer in my view has no basis.

The upshot of the foregoing is that the Plaintiff's Notice of Motion application dated 28th April 2015 has no merit. The same fails wholly and is accordingly dismissed with costs to the interested party.

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

S. OKONG'O

JUDGE

In the presence of:

Mr. Saende for the Plaintiff

N/A for the Defendant

Mr. Nyakoe h/b for Mogusu for the Interested Party

Kajuju Court Assistant