



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C CASE NO. 48 OF 2017

FRANCIS WAWERU MWANGI.....PLAINTIFF/APPLICANT

VS

KARIUKI KIMANI alias KARIUKI MANUTHU.....DEFENDANT/RESPONDENT

KARIUKI KURIA MWANGI..... INTERESTED PARTY

RULING

1. On the 16th June 2016, the Applicant filed a Notice of Motion seeking prayers that, one Joseph Kuria Mwangi be enjoined as a party to the suit that he filed by way of Originating Summons on the 7th October 2014. In that suit, the Applicant is claiming to be entitled to the Land Reference no. Loc 18/Marumi/213 (the suit property) by adverse possession. The application is supported by the affidavit of FRANCIS WAWERU MWANGI dated the 16th June 2016 and the grounds set out thereon. He deponed that the Respondent died on 23rd November 2014 before the case was heard and the children of the deceased have sold the suit property to the interested party as evidenced by the official search dated 17th May 2016.

2. The interested party opposed the application and filed a Replying Affidavit on the 21st October 2016. That he is a purchaser for value without notice of the suit property of Loc 18/Marumi/213 which he purchased from the lawful beneficiaries of the estate of the Respondent. That before buying the suit property he conducted a search which revealed, firstly that the registered owners were; Samuel Kirumba Kariuki, Margaret Waithira Kariuki, Teresiah Wambui Kariuki, Francis Gicheha Kariuki, Mary Wanjiku Kariuki and Peter Kimani Kariuki (the beneficiaries), and secondly, that the suit land had never been permanently occupied by any person, that it remained without any developments whether temporary or permanent. That consequently he is a stranger to the claim for adverse possession in the instant suit having acquired the suit property for value without notice and obtained an indefeasible title thereon. That enjoining him as a party will prejudice and jeopardize his indefeasible right to title of the suit property.

3. When the parties appeared before this Court on the 13th March 2017, they agreed to canvass the application by way of written submissions and have duly filed their submissions on the 20th February 2017 and 19th December 2016 respectively. I have carefully considered the application, rival affidavits and annexures as well as written submissions and now proceed to determine the application.

4. The main issue for determination is whether the interested party should be enjoined as a party to the instant suit.

5. The term interested party is defined under Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, as follows: -

“A person or entity that has an identifiable stake or legal interest in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in the litigation.”

6. Order 1 Rule 10 (2) of the Civil Procedure Rules which provide that: -

“The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out. And that the name of any person who ought to have been joined, whether as plaintiff or defendant, or 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, be added.”

7. From the above procedural rule, it is clear that the Court has unfettered discretion to admit or strike out from proceedings a party with or without an application being made. In the former case, it is trite law that the Court can, upon satisfying itself that the person whose presence before the Court may be necessary in order to enable or assist it effectually and completely determine all questions involved in a dispute, add such person as a party.

8. The guiding principles for joinder of parties are as follows; the party must be a necessary party, must be a proper party, there must be relief expected to flow from one party to the other and the ultimate order or decree of the Court cannot be enforced without his presence in the matter and his presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.

9. Sarkar’s Laws of Civil Procedure Vol 1 at page 531, states that for the determination of the question who is a necessary party there are two tests; firstly, there must be a right to some relief against such party in respect of the matter involved in the proceedings in question and secondly, it should not be possible to pass an effective decree in the absence of such a party.

10. The need to enjoin the interested party has arisen out of the transfer of the suit property by the beneficiaries to him. It is the Applicant’s case that the subject of his claim for adverse possession has now been conveyed to the hands of the interested party by the beneficiaries under the estate of the deceased respondent. It is his case that the orders of the Court will have an effect on the interested party. It is not in dispute that the suit property has changed hands. It is also not in dispute that a certificate of confirmed grant has been issued in respect of the estate of the deceased respondent to Samuel Kirumba Kariuki and Teresiah Wambui Kariuki on the 22nd October 2015. There is no controversy at this stage on the beneficiaries of the estate of the late respondent too.

11. Section 26 of the Land Registration Act, No.3 of 2012 states as follows;

“the certificate of title issued by the register upon registration, or a purchaser of the land upon a transfer or transmission by the proprietor shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner subject to the encumbrances easements restrictions and conditions contained or endorsed in the certificate and the title of that proprietor shall not be subject to challenge except a). on the ground of fraud, misrepresentation to which the person is proved to be a party; or b). where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme”.

The interested party has succinctly stated that he is the registered proprietor of the suit land having purchased the same from the beneficiaries of the estate of the respondent for value without notice. The Court would have thought that the interested party would be a willing participant to the proceedings in this suit to safeguard his rights in the suit property, just in the event of a likelihood that the orders of the Court in respect to the suit property shall affect the interested party one way or another.

12. For avoidance of doubt, this Court ordered on the 13th March 2017 that Samuel Kirumba Kariuki and Teresiah Wambui Kariuki, the legal representatives of the estate of the late Kariuki Kimani alias Kariuki Manuthu be substituted as the defendants in this suit.

13. Having evaluated the application, the affidavit evidence and the material placed before this Court, this Court is satisfied that the interested party is a necessary party to these proceedings to enable the Court to effectually and completely adjudicate upon the rights of the parties and settle all questions involving the suit property, the subject matter of the adverse possession claim in the suit.

14. In the upshot, the Court makes the following orders; -

(a) The notice of motion dated the 16th June 2016 is merited and is allowed with the consequence that JOSEPH KURIA MWANGI is enjoined as an interested party in the present suit.

(b) The costs of this application be in the cause.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 28TH APRIL 2017.

J. G. KEMEI

JUDGE

Ruling delivered in open Court in the presence of:

Respondent - Mr. Karichu holding brief for Mr. Nganga

Applicant - N A

Interested Party - N A

Susan/Kuiyaki - C/A

J. G. KEMEI

JUDGE