

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC. APPEAL NO. 32 Of 2014

LEAH MUMBI KIRIGA.....APPELLANT

VERSUS

STANLEY MATHU NGENE.....RESPONDENT

WILLIAM MUCHAI NGENE.....INTERESTED PARTY

RULING

The Appellant filed a suit at the Principal Magistrate’s Court at Githunguri against the Respondent, namely, Githunguri SPMCC No. 18 of 2013 (hereinafter “the lower court case”) seeking eviction of the Respondent from Plot No. 26 Karia Market (hereinafter referred to as “the suit property”). The Appellant claimed that the Respondent was her tenant on the suit property and had defaulted in rent payments thereby accumulating rent arrears to the tune of Kshs. 51,000/= which he had refused to pay despite demand. The Respondent entered appearance and filed a statement of defence on 15th May 2013 denying the Appellant’s claim. The Respondent denied that the Appellant was the owner of the suit property and contended that the property was transferred to the Appellant fraudulently by her husband to defeat the Respondent’s claim in respect thereof. The Respondent contended that the suit property was a partnership property in which partnership he had an interest. The Respondent pointed out that there had been a High Court case involving the Respondent and the Appellant’s husband namely, Nairobi HCCC No. 3962 of 1985 in which a determination was made that the suit property formed part of the partnership property aforesaid. On 12th June 2013 the interested party herein filed an application to be joined in the lower court case as interested party. The court allowed the application on 26th June 2013 but joined him in the suit as 2nd Defendant instead of interested party. The jurisdiction of the lower court was challenged. In a ruling delivered on 14th August 2013, the lower court held that it lacked jurisdiction to entertain the Appellant’s suit and struck out the plaint with costs. It is against that ruling that this appeal was preferred to this court by the Appellant.

What is now before me is the interested party’s application dated 2nd February 2015 in which the interested party has sought leave to be joined in this appeal as interested party on the ground that his presence before the court would be necessary to enable the court to effectively and completely adjudicate upon and settle all questions in the appeal. The interested party has contended that he is related to the Appellant and the Respondent and that he is conversant with issues raised in the appeal herein. The application was opposed by the Appellant on the ground that the application had no merit and was an abuse of the process of the court.

At the hearing of the application, the interested party relied on his affidavit filed in support of the application. The Appellant on the other hand, relied on her affidavit in reply and on her written submissions dated 23rd March 2015. I have considered the application and the opposition thereto by the Appellant. I am of the view that this application is misconceived. As I have mentioned above, the interested party was joined in the lower case as 2nd Defendant and he participated in the proceedings leading to the order appealed before this court. It follows therefore that he is automatically a Respondent to the present appeal and does not require leave of this court to be joined in the appeal so as to address the court. The interested party having been the 2nd Defendant in the lower court is the 2nd Respondent in these proceedings and the Appellant should serve him with all the documents filed herein in the same manner that she has served the 1st Respondent, Stanley Mathu Ngene.

For the foregoing reasons, interested party's application dated 2nd February 2015 is superfluous. The same is accordingly dismissed with no order as to costs.

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

S. OKONG'O

JUDGE

In the presence of:

N/A For the Appellant

N/A For the Respondent

N/A For the Interested Party

Kajuju Court Assistant