



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MILIMANI**

**ELC CIVIL SUIT NO. 464 OF 2007**

**FORMELY HCCC NO.2087 OF 2011**

**GEORGE ROMBO.....PLAINTIFF/RESPONDENT**

**VERSES**

**JONES GIBSON MWANGI.....DEFENDANT/APPLICANT**

**RULING**

1. The Defendant/ Applicant Jones Gibson Mwanga filed two Applications. The first one is by way of Chamber Summons dated 10<sup>th</sup> November 2014 in which he seeks a third party notice to be issued against Housing Finance Company of Kenya (HFCK). The other Application is by way of Notice of Motion dated 11<sup>th</sup> November 2014 in which he seeks that George Rombo be substituted with Valerie Ombajo Rombo.

2. The Defendant/Applicant had been sued by George Rombo (Deceased) who sought orders barring the Applicant from interfering with a property known as LR No Nairobi Block 76/810 which the deceased contended that he had purchased during a public auction.

3. The Applicant had taken a loan from HFCK which he was to repay for a period of 15 years with effect from 1979. The Applicant contends HFCK put up the property for sale on allegation that he had failed to repay the loan as agreed. The Applicant sought for Kshs. 1,700,000 which he paid to HFCK and that HFCK refunded to him Kshs.420,000 being the excess amount after he redeemed the property.

4. The Applicant further contends that the deceased later sued him on grounds that he had purchased the same property at a public auction. The Applicant contends that the deceased did not purchase the property and that there was a fraudulent scheme involving HFCK and the deceased to deprive him of his property. It is on this basis that he seeks a third party notice to issue against HFCK and an order made that the deceased be substituted by his wife Valerie Ombajo Rombo.

5. I have considered the two Applications. The first Application is one that is brought ex-parte. However the record in this file shows that the third party was served. This followed directions of the court from the supporting affidavit of the application for issuance of a third party notice. It is clear that there are issues which call for the third party to be brought on board so that the issues in this matter can be addressed.

6. There is evidence that the applicant paid Kshs. 1, 700,000 to redeem his property. There is also evidence that there was a refund of Kshs. 420,000 to the applicant being refund of the excess paid. The court would like to know on what basis the deceased was again claiming to have bought the same property which had been redeemed by the applicant. To this extent, I find that the Application for third party notice is well founded. I allow the Application dated 10<sup>th</sup> November 2014.

7. On the issue of the second Application which seeks substitution of the deceased with his wife Valerie Ombajo Rombo, there is no evidence that the said Valerie Ombajo Rombo is the legal representative of the estate of the deceased. It is clear that on 21<sup>st</sup> March 2007 Justice Aluoch issued an order that counsel for the deceased was to ensure that grant of letters ad litem were obtained to enable the suit to go on. The Judge gave 30 days within which those letters ad litem were to be obtained.

8. There is no evidence to show that such grant of letters of administration ad litem were obtained. The deceased's suit against the applicant abated one year after the demise of the deceased. The suit can only be continued after the same is revived and a legal representative of the deceased takes up the same. I cannot therefore order substitution of the deceased with a person who is not a legal representative of the estate of the deceased. It is on this basis that I decline to grant orders of substitution of the deceased with Valerie Ombajo Rombo. The upshot of this is that the Applicant's Application dated 11<sup>th</sup> November 2014 is dismissed with no order as to costs.

It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI on this 31<sup>st</sup> day of May 2017**

**E.O OBAGA**

**JUDGE0**

In the presence of applicant in person

Court assistant – Hilda.