



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 309 OF 2012**

**MOSES MAINA NG'ANG'A .....1<sup>ST</sup> PLAINTIFF**

**LOISE WANJIRU MAINA.....2<sup>ND</sup> PLAINTIFF**

**LUCY NJUHI MAINA .....3<sup>RD</sup> PLAINTIFF**

**JANE MUKAMI NGUGI (*suing in her capacity as the***

*personal representative of the estate of JAMES BENSON*

**NGUGI (deceased).....4<sup>th</sup> PLAINTIFF**

**VERSUS**

**GEORGE NG'ANG'A MAINA.....DEFENDANT**

**RULING**

***(Application for joinder as interested party; suit by various persons claiming that the defendant holds land in trust; defendant having sold part of the land to the applicants; whether applicants may be enjoined as interested party; applicants will not be of assistance in determining whether or not there exists a trust; application dismissed)***

1. The application before me is that dated 18 August 2016 filed by some persons on behalf of Kamwanjo Self Help Group, which wishes to be enjoined in these proceedings as 2nd interested party. The application is not opposed by the plaintiff but is opposed by the defendant and the 1st interested party. Before I go to these, I think it is appropriate that I set out a little background to this suit.

2. This case was commenced by way of plaint on 29 June 2011. It is pleaded that the 1st plaintiff, purchased the land parcel No. 1556/48 from Mararo Family Company Limited and that he was then issued with a Certificate of Title. It is averred that the 1st plaintiff proceeded to register the land in the name of the defendant, on the understanding that he would hold in trust for the benefit of himself and the 2<sup>nd</sup> to 4<sup>th</sup> plaintiffs who are his siblings. It is averred that on 11 November 2003, the parties physically subdivided the land into four distinct and equal portions, and each plaintiff allocated a portion. They drew a Memorandum of Understanding and agreed that a surveyor would formalize the registration of these subdivisions. It is alleged that in breach of trust, the defendant proceeded to procure a provisional title to the said land while knowing that the original title is held by the 1st plaintiff, and has now offered the whole land for sale to the public. In the suit, the plaintiffs inter alia want an order compelling the

defendant to subdivide the land into four portions each to be held by the plaintiffs.

3. The defendant filed defence vide which he has contended that he owns the suit land exclusively. He has denied that the land is held in trust.

4. On 30 April 2013, an application by Cactus Self Help Group to be enjoined to the proceedings as interested party was made. The said group averred that it is interested in the case since it has purchased 4.77 acres of the suit land. That application was allowed by consent on 3 October 2013. That is how Cactus Self Help Group became the 1st interested party to this case.

5. The applicants herein, who now propose to be the 2nd interested party, state that they are a Self Help Group registered on 6 October 2015. They state that they have a direct interest in the subject matter of the case for the reason that they purchased 2 acres of the suit land in the year 2003 from the defendant. They are apprehensive that if the case is concluded without them they will be blocked from making their claims. In the supporting affidavit, the applicants aver that they have been unable to have the land transferred to them, owing to an order of injunction issued in this suit.

6. In opposing the motion, the defendant has averred that the applicant was non-existent when it purported to purchase the 2 acres of the suit land. On the part of the 1st interested party, it was argued inter alia that the presence of the 2nd interested party will add no value to the proceedings herein but will only contribute to more confusion. It is contended that the applicant can pursue its perceived remedies against the defendant in a separate suit.

7. I have considered the application alongside the submissions of counsel. It is apparent that the applicant wants to be enjoined to this case as interested party for the reason that it alleges to have purchased a portion of the suit property from the defendant.

8. I have already set out the case of the plaintiffs against the defendant. Their case is that the defendant became registered as proprietor so that he can hold the property in trust for himself and his siblings. The main issue for determination in this case is whether or not the defendant holds the suit land in trust for the plaintiffs or whether he is an absolute owner. I do not see how the joinder of the applicant as interested party is going to help in determining that issue. The applicant alleges to have purchased a portion of the suit property from the defendant. If it is the intention of the applicant to enforce that alleged agreement, then the avenue is open for the applicant to file a separate suit. In the event that I allow the applicant to come into these proceedings so that they can press their case of purchase, then I will only be muddling the issues in this case. I observe that the 1st interested party was enjoined in these proceedings because of a claimed purchaser interest, but that joinder was by consent, and if it were left for me, I doubt if I would have allowed that joinder as I have my own reservations as to whether they will actually assist this court in determining whether or not a trust exists between the plaintiffs and defendant. The fact that the 1st interested party managed to be enjoined, is no reason for me to allow the applicant to be enjoined to this suit.

9. For the above reasons, I dismiss the application with costs to the defendant, who is the only substantive party who opposed the application.

10. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 22<sup>nd</sup> day of June 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

Mr . Murache holding brief for Mr. Irungu for the applicant.

Mr. Bosire holding brief for Mr. Okoth for the plaintiff

Mr. Kambo holding brief for Mr. Kahigah for the defendant.

Mr. Karanja Mbugua for the interested party.

Court Assistant: Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**