



**REPUBLIC OF KENYA**  
**IN THE ENVEIROMENT AND LAND COURT**

**AT MILIMANI**

**ELC NO. 619 OF 2016**

**GODFREY MBUURI GACHURA.....PLAINTIFF**

**=VERSUS=**

**MUGA DEVELOPERS LIMITED.....DEFENDANT**

**SURAYA PROPERTY GROUP LIMITED.....APPLICANT**

**RULING**

1. The Applicant Suraya Property Group Limited is a sister company to Muga Developers Limited which is the Defendant in this case. The Applicant filed a Chamber Summons in which it seeks to be enjoined in this case as a second defendant. The Plaintiff/Respondent has opposed the applicant's application contending that the same is *misconceived scandalous, vexatious* and *an abuse* of the process of the Court. The Respondent further contends that he has no claim against the applicant which was not party to the two agreements between him and the defendant and that therefore the applicant's bid to be enjoined is only meant to delay the conclusion of this case.
2. The Applicant contends that it is necessary that it be enjoined in these proceedings because its interests will be greatly prejudiced if the case is heard without it being made a party. The Plaintiff/Respondent had entered into a sale agreement dated 25<sup>th</sup> July 2013 with the proposed second defendant. The agreement was in respect of sale of the Respondent's two properties known as LR No.28223/37 and LR 28233/62 which he was in the process of acquiring from Jacaranda Holdings Ltd. It was agreed that the Respondent was to be given two units at Fourways Junction being SPG/03/P2/H047 and SPG/ 03/P2/H048 Hibiscus Court Seven Phase 2. Though the units which are the subject of this suit are different, they are owned by the same entity and refer to the agreement entered into by the Respondent and the proposed defendant.
3. The Respondent has not transferred the two properties to the defendant and the Respondent's insistence that it gets the two units will prejudice the Applicant. The Applicant contends that its presence in this suit will assist the Court to effectually and completely make a fair judgement in the present case.
4. I have considered the Applicant's application as well as the opposition to the same by the Plaintiff/Respondent. I have also considered the submissions by the parties herein. Order 1, Rule 10(2) of the Civil Procedure Rules gives the Court power on its own motion or on application to add a party whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.
5. In the instant case, the Applicant has demonstrated that it entered into an agreement with the Respondent in which the Respondent was to sale his two properties to the applicant. The Respondent was

instead of getting cash for the two properties given two units at Fourways Junction. The two properties sold by the Respondent to the applicant have not been transferred to the applicant. It therefore follows that if the Respondent went on with the case against the defendant without the presence of the applicant, the applicant will be greatly prejudiced if the Court were to give the two units to the Respondent without the Respondent fulfilling its obligations to the Applicant.

6. In **Werrot & Co.Ltd & others Vs Andrew Douglas Gregory & others , Nairobi High Court Civil case No.2363 of 1998 (1998) KLR 2848 (CCK)** it was held as follows:-

*“For determining the question whom is a necessary party there are two tests.*

*i. There must be a right to some relief against such party in respect of the matter involved in the proceedings in question and*

*ii. It should not be possible to pass an effective decree in the absence of such a party”.*

7. The agreement of 25<sup>th</sup> July 2013, clearly shows the nexus between the Respondent and the Applicant in this case on the one part and the relationship between the Respondent and the Defendant in this case on other part. The Respondent was to take two units at Fourways Junction instead of getting cash for properties he was selling to the Applicant. The sale of the properties to the applicant has not gone through due to reasons clearly stated in the agreement. The Applicant is therefore a necessary party for the Court cannot adjudicate on this dispute without the input of the Applicant.

8. In the case of **Departed Asians Property Custodian Board v. Jaffer Brothers Ltd [1999] I.E.A 55, it held as follows:-**

*“ A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions in the matter .....For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the Plaintiff seeks in the suit, would legally affect the interest of that person , and it is desirable for avoidance of multiplicity of suits, to have such person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person”.*

9. It is clear that the Respondent’s acquisition of the two properties at Fourways Junction was dependent on the Applicant having ownership of the two properties which the Respondent was selling to it. I therefore find that the Applicant’s application is well founded. I allow the Applicant to be enjoined in this suit as a second defendant. The Plaint shall be accordingly amended and summons issued to be served upon the added party only. Costs of this application shall be in the cause.

It is so ordered.

**Dated, Signed and Delivered at Nairobi on this 31<sup>st</sup> day of July 2017.**

**E.O.OBAGA**

**JUDGE**

In the Presence of :-

M/s Mwachiro for Mr Njuguna for Plaintiff

Mr Wachira for Mr Onsare for defendant

Court Assistant: Hilda

**E .O. OBAGA**

**JUDGE**