



REPUBLIC OF KENYA
IN THE ENVEIROMENT AND LAND COURT

AT MILIMANI

ELC MISC APP.NO 144 OF 2014

NAIROBI CITY COUNTY.....PLAINTIFF

=VERSUS=

HABIBA ABDULHERMAN HAWA.....1ST DEFENDANT

MUMTAZ HAWA D/O

ABDULREHMAN MOHIDIN HAWA.....2ND DEFENDANT

AMINA HAWA D/O

ABDULREHMAN MOHIDIN HAWA.....3RD DEFENDANT

MOHIDIN S/O

ABDULREHMAN MOHIDIN HAWA.....4TH DEFENDANT

ATTAIN ADVISORY CONSULTANTS LTD.....PURCHASERS/APPLICANT

P.G WAWERU T/A IDEAL AUCTIONEERS.....1ST INTERESTED PARTY

CHIEF LAND REGISTRY.....2ND INTERESTED PARTY

HON.MIKE MBUVI SONKO.....INTENDED 3RD INTERESTED PARTY

LILLY WANJIKU NJUGUNAINTENDED 4TH INTERESTED PARTY

RULING

BACKGROUND.

1. This is a Ruling in respect of a Notice of Motion dated 21st March 2016, which seeks to have Hon. Mike Mbuvi Sonko and Lilly Wanjiku Njuguna enjoined in this case as interested parties. Besides seeking to be enjoined in this suit, the applicants also seek other reliefs. The genesis of this application can be traced back to a suit filed at the City Court by Nairobi City County against one **Habiba Abdul Herman Hawa** for recovery of arrears of rates and interest. The rates were in respect of **LR**

No.209/403/3. This suit proceeded ex-parte after which the property was sold through public auction to recover the amount owed.

2. The Auctioneer who was involved who is now the first interested party herein moved the Court for a certificate making the sale absolute and for a vesting order to issue. The orders were granted by the Court on 3rd September 2016. The Auctioneers again moved the court ex-parte and asked for the orders of 3rd September 2016, to be reviewed to add on the second third and fourth defendants as judgement debtors. This application was allowed ex-parte . The Deputy Registrar then proceeded to sign the necessary documents which enabled the sold land to be registered in the name of Attain Advisory Consultants Limited.

APPLICANTS CONTENTION

3. The first applicant, Mike Mbuvi Sonko contends that he received a complaint from the second, third and fourth defendants that their property which they held as tenants in common had been unlawfully transferred to Attain Advisory Consultants. He commenced investigations which revealed that there was no service upon the defendant in the Lower court case. That the defendant in the city court case had died 3 years prior to the filing of the suit. That the demand for rates was fake and that the company which bought the property was incorporated by close relatives of the Governor of Nairobi County. That the conveyance was registered before a vesting order was issued.

4. The second applicant contends that she is one of the tenants in the suit property and that she is acting on behalf of four other tenants who have been threatened with eviction by the purchaser of the property.

RESPONDENTS' CONTENTION

5. The applicants application is opposed by Nairobi City County through a replying affidavit sworn on 16th June 2016. The Nairobi City County contends that the application is an abuse of the process of the court. That the applicants have no justifiable interest in this suit and the application is only intended to delay the finalization of this suit. That the tenants can ventilate their issues in a separate suit and that indeed there is a pending suit by the tenants against the purchaser of the property which is pending in lower Court.

6. The first interested party has opposed the applicants' application based on a replying affidavit sworn on 6th April 2016. The first interested party contends that the applicants' application is frivolous and is otherwise an abuse of the process of the court. That the application is brought by busy bodies who have no demonstrable interest in the suit. That the first applicant is introducing political undertones in this matter and that this application is only meant to delay the finalization of this matter.

7. The purchaser of the suit property has opposed the applicants application through a replying affidavit sworn on 8th April 2016. The second Respondent contends that the first applicant has no interest in the litigation before court and his joinder will only delay the finalization of this case. That the tenants who are now seeking to be enjoined in this suit had filed a suit against the second Respondent in the lower court. An injunction which they sought has since been dismissed and that they executed a lease for one year which has since expired. That the tenants should not be enjoined as they have failed to disclose the existence of a case filed in the lower Court.

ANALYSIS

8. I have carefully considered the applicants' application and the opposition to the same by the respondents. I have also considered the submissions by the parties to these proceedings. Most of the reliefs being sought by the applicants are the same reliefs sought by the second, third and fourth defendants. It is generally agreed that there are no provisions in the civil procedure Rules which provide for joinder of an interested party. However courts have generally taken the definition of an interested party in the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) practice and

Procedure Rules, 2013 commonly referred to as “*the Mutunga Rules, Rules*”, 2 thereof defines an interested party as a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court but is not a party to the proceedings or may not be directly involved in litigation . This definition was adopted in **Judicial Service Commission Vs Speaker of National Assembly & Others (2014) eKLR.**

9. In the instant case, the first applicant Honourable Mike Mbuvi Sonko is Senator of Nairobi County. In as much as he has mandate to oversight the affairs of the City County in his capacity as Senator, he cannot seek to enter into private litigation to agitate issues on behalf of members of the public who are themselves ably represented and can agitate their own cases. In the present case, Hon. Sonko is seeking to have certain orders made by the Lower Court reviewed and set aside. These are the same orders the affected parties that is the second, third and fourth defendants are seeking. Hon. Sonko has no identifiable stake or legal interest in the matter before court. His presence is therefore not necessary.

10. The dispute before the Court can be decided without the presence of Hon. Sonko. As for the tenants in the property, their presence in this suit is also not necessary. The tenants had filed a suit against the purchaser of the property and the first Defendant. This suit was only withdrawn after the present matter had been filed and this explains why the tenants filed a further affidavit on 14th July 2016. Other than their tenancy, the tenants have no other interest in the outcome of the litigation. What they are seeking is the same thing being sought by the second, third and fourth defendants. Their presence in this suit is therefore not necessary. The dispute herein can completely and effectually be determined without the presence in this suit.

CONCLUSION

11. It is now clear from the above analysis that the applicants application cannot succeed. The same is hereby dismissed with costs to the second Respondent, Attain Advisory Consultants Ltd, the first interested party P.G Waweru t/a Ideal Auctioneers and Nairobi City County.

It is so ordered.

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

E.O.OBAGA

JUDGE

In the Presence of :-

Mr Kamande for Prof Mumma for 2nd , 3rd and 4th defendants

Mr Omosa for Mr Omotii for 1st Interested Party

Court Assistant: Hilda

E .O. OBAGA

JUDGE