



**REPUBLIC OF KENYA**

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

**CASE NO. 43 OF 2015**

**RAMJI MEGHI GUDKA LTD .....PLAINTIFF**

**VERSUS**

**KISII COUNTY GOVERNMENT.....1<sup>ST</sup> DEFENDANT**

**EXECUTIVE COMMITTEE MEMBER**

**LAND KISII COUNTY GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**MIGOYO NYAMWEYA .....1<sup>ST</sup> PROPOSED INTERESTED PARTY**

**EDWARD NORMAN NYAMWEYA ...2<sup>ND</sup> PROPOSED INTERESTED PARTY**

**RULING**

1. The plaintiff vide a plaint dated 10<sup>th</sup> February 2015 filed in court on the same date avers that it is the registered proprietor of land parcels Nos. **Kisii Municipality/Block III/360, 361, 362 and 363**. The plaintiff claims the defendants have committed acts which constitute trespass and/or interference with the plaintiff's rights of ownership. Inter alia, the plaintiff seeks a declaration that it is the bonafide and registered owner of **LR No's Kisii Municipality/Block III/360, 361, 362 and 363** respectively and further seeks an order of permanent injunction to restrain the defendants' unlawful activities on the said properties.

2. By a Notice of Motion dated 31<sup>st</sup> January 2017 one, Nyamweya Miyogo and Edward Norman Nyamweya have applied to be enjoined as interested parties in the instant suit. The application is based on the grounds set out on the body of the application and on the affidavit sworn in support thereof by Nyamweya Miyogo the proposed 1<sup>st</sup> interested party. The main ground the proposed interested parties rely on is that the 1<sup>st</sup> proposed interested party is the registered owner of **LR No. Kisii Municipality/Block III/360** as per the copy of the lease dated 1<sup>st</sup> May 1992 and certificate of lease dated 24<sup>th</sup> September 1992 both annexed to the affidavit in support of the application. The applicants also aver that the plaintiff has previously instituted Kisii ELC No. 153 of 2012 against the proposed 1<sup>st</sup> interested party respecting land parcel **360** a fact which the plaintiff has not disclosed in the instant suit.

3. The plaintiff filed a statement of grounds of opposition to the joinder application on 21<sup>st</sup> February 2017 and inter alia averred that the proposed interested parties lack the *locus standi* to be enjoined in the instant suit as they had not demonstrated any basis. The plaintiff further avers that the application does not

satisfy the requirements for joinder under the provisions of Order 1 Rule 10 of the Civil Procedure Rules, 2010.

4. The parties argued the application by way of written submissions. The plaintiff/respondent filed his submissions on 8<sup>th</sup> May 2017 and the applicants filed theirs on 27<sup>th</sup> June 2017. I have reviewed the application and the parties written submissions and the issue for determination is whether the intended interested parties have demonstrated they have a legal interest in the subject matter of the suit and that their joinder is necessary to enable the court to determine all the issues that arise in the matter finally.

5. Order 1 Rule 10 provides for the substitution and/or addition of parties to a suit. Order 1 rule 10(2) provides:

**10(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”**

6. The proposed 1<sup>st</sup> interested party has placed before the court documents that disclose he may have an interest in one of the land parcels claimed by the plaintiff in the instant suit. The 1<sup>st</sup> interested party has annexed a letter of allotment dated 7<sup>th</sup> January 1992 showing he was allocated an unsurveyed plot by the Commissioner of Lands in Kisii Municipality measuring 0.045hectares. The 1<sup>st</sup> interested party was issued a lease for the plot described as **Kisii Municipality/Block III/360** dated 1<sup>st</sup> May 1992 which was registered on 24<sup>th</sup> September 1992 and a certificate of lease issued on 24<sup>th</sup> September 1992. This apparently is one of the plots claimed by the plaintiff as per the plaint.

7. Although the pleadings were not annexed, the applicants claim the plaintiff had filed an earlier suit namely Kisii ELC No. 153 of 2012 against the 1<sup>st</sup> interested party. The applicants have annexed a list of the plaintiff's supplementary bundle of documents filed in the said earlier suit on 13<sup>th</sup> February 2013. The plaintiff/respondent herein has not refuted the existence of this earlier suit and their silence in regard thereof may be taken as an affirmation that the suit does in fact exist.

8. Taking into account the totality of all the material placed before the court, I am satisfied that the 1<sup>st</sup> proposed interested party has demonstrated he has some legal interest in land parcel **Kisii Municipality/Block III/360** and that he may be prejudiced unless he is permitted to be enjoined in the suit to safeguard his interest. If the order of declaration of ownership is made in favour of the plaintiff as sought by the plaintiff without the interested party being afforded an opportunity of being heard, the 1<sup>st</sup> interested party stands to be prejudiced.

9. The interest of the 2<sup>nd</sup> proposed interested party has not been demonstrated and I see no basis for allowing him to be enjoined to the proceedings. His presence as a party in the proceedings is not necessary to enable the court to adjudicate on all the questions that arise in this matter.

10. The upshot is that I will allow the 1<sup>st</sup> interested party, the said Nyameya Miyogo, to be enjoined to these proceedings as the 3<sup>rd</sup> defendant. The plaintiff is directed to cause the plaint to be amended and served on the new 3<sup>rd</sup> defendant within 21 days of this ruling. The costs of the application will abide the outcome of the suit.

11. Orders accordingly.

**Ruling dated, signed and delivered at Kisii this 29<sup>th</sup> day of September, 2017.**

**J. M. MUTUNGI**

**JUDGE**

**In the presence of:**

Mr. Oguttu for the plaintiff

Mr. Obure for Onsembe for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants

Ruth court assistant

**J. M. MUTUNGI**

**JUDGE**