



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CIVIL SUIT NO. ELC 198 OF 2012

VERONICA WANJIRU NGIBUINI.....1ST PLAINTIFF
IRENE N. KAGENI.....2ND PLAINTIFF
AMY KUMICINSKI.....3RD PLAINTIFF
JOHN KUMICINSKI.....4TH PLAINTIFF

VERSUS

REAH MARIE GITHAIGA.....1ST DEFENDANT
JOHN MWENJA NGUMBA.....2ND DEFENDANT
FRANCIS NDERITU NDIRANGU.....3RD DEFENDANT
SILA ANGUICHE ATIATO.....4TH DEFENDANT
DOUGLAS MUCHOMBA.....5TH DEFENDANT
SHADRACK KIMANI.....6TH DEFENDANT
DUNCAN MWANGI.....7TH DEFENDANT
RICHARD MUBUA MUTISO P/A R. M. MUTISO & CO. ADVOCATES...8TH DEFENDANT

RULING

The 8th Defendant filed the application dated 11/1/2016 seeking to be allowed to deposit the title over the Suit Property in court pending the resolution of the dispute between the Plaintiffs and the 1st to 7th Defendants. In addition, the 8th Defendant also seeks to be released from this suit. The application is supported by the 8th Defendant's affidavit.

The 8th Defendant is an Advocate of this court. He handled the sale and purchase of L. R. No. 15460 ("Suit Property") and the title over this land was deposited in his custody. The dispute is over the ownership of the Suit Property and is between the Plaintiffs, and the 1st to 5th Defendants. The 8th Defendant confirms in his affidavit that he has no interest in the Suit Property other than his legal fees and that he is prepared to give the documents of title to whomever the court directs. He also states that he is

ready to deposit the title over the Suit Property in court for safe keeping pending the resolution of the dispute and that he has not colluded with any of the Plaintiffs to bring this application. The application is brought under order 34 Rule 1 of the Civil Procedure Rules.

The Plaintiff did not oppose the application but the 1st and 3rd opposed it. The Plaintiff's position is that as long as the 8th Defendant deposits the title document with court, the court can proceed to determine the issue of ownership of the Suit Property as between the Plaintiffs and the 1st and 3rd Defendants.

On their part, the 1st and 3rd Defendants contend that in the Amended Plaint there are serious allegations of collusion between the 8th Defendant and the 3rd Defendant and that if the 8th Defendant is released from these proceedings, it will be taken that those allegations are admitted. The 1st and 3rd Defendants also contend that Mutungi J. directed in his ruling of 10/9/2015 that the 8th Defendant was a necessary party.

The court has looked at the ruling made by Mutungi J. on 10/9/2015 and notes that the court observed that the 8th Defendant would be the proper party to bring interpleader proceedings if he satisfied the requirements of order 34 Rule 2 of the Civil Procedure Rules, which the 8th Defendant had not done at that time. The court found that the 8th Defendant remained bound to the proceedings having been the transaction advocate and being the custodian of the title document. The court agreed that an interpleader application could serve to discharge the 8th Defendant from the proceedings since the court would make an order regarding the custody of the documents of title. This is the application the 8th Defendant has now filed.

Order 1 of the Civil Procedure Rules deals with parties to suits. Rule 3 states that all persons may be joined as defendants against whom any right to relief arising out of the same transaction is alleged to exist or alternatively where if separate suits were brought against such persons, a common question of law or fact would arise. The 1st and 3rd Defendants do not allege that any relief is sought against the 8th Defendant.

The court notes that the order that the Plaintiffs seek in the Amended Plaint against the 8th Defendant is for the release of all documents in his possession in relation to the Suit Property. Rule 5 of Order 1 states that it is not necessary that every Defendant be interested as to all the relief claimed in any suit against him. Both rules 3 and 5 imply that some relief should be sought against the Defendant in the suit. Rule 6 gives the Plaintiff the option to join as parties to the same suit persons who are severally and jointly liable on one contract. Under Rule 10 (2) the court may order that the name of any party improperly joined be struck out.

The court allows the application and directs the 8th Defendant to deposit the title document over the Suit Property in court pending the resolution of the dispute between the Plaintiffs and the 1st to 7th Defendants. Once the 8th Defendant deposits the title in court, he shall be released from this suit. Each party will bear its own costs.

Dated and delivered at Nairobi this 19th day of September 2017.

K. BOR

JUDGE

In the presence of: -

Mr. Getanda for the Plaintiffs

Mr. Wachira for the 8th Defendant

Mr. V. Owuor- Court Assistant