



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND AT KAJIADO

MISCELLANEOUS CIVIL SUIT NO. 34 OF 2017

(Formerly Machakos Miscellaneous Civil Suit No. 258 Of 2011)

KENYA RE INSURANCE CORPORATION STATUTORY MANAGER

UNITED INSURANCE COMPANY LIMITED.....APPLICANT

-VERSUS-

THE CHIEF LAND REGISTRAR THE DISTRICT LAND REGISTRAR

KAJIADO.....DEFENDANT

JUDITH WAMBUI MUGAMBI.....INTERESTED PARTY

RULING

What is before court is the interested party's Chamber Summons application dated 27th April, 2016 and filed on 15th June, 2016 seeking prayers pursuant to Order 1 Rule 10 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act and all the other enabling provisions of the law.

The application is supported by the affidavit of JUDITH WAMBUI MUGAMBI the intended interested party herein where she deposes that she is the registered owner of land parcel number KAJIADO/OLCHORO - ONYORE/11250 hereinafter referred to as 'the suit land', measuring 1.210 hectares that she duly purchased from one SILVESTER GATHUKU MUIGAI for Kshs. 2,595,000/= vide a sale agreement dated 11th June, 2011 which was executed on the same date. She avers that the suit property measuring three acres was excised from KAJIADO/OLCHORO - ONYORE/4776 with subdivisions undertaken after she had paid the full purchase price, and the property being registered in her name on 11th July, 2011. She learnt of an inhibitory order dated 8th November, 2011 vide Miscellaneous Civil Suit Number 258 of 2011 over land parcel number KAJIADO/OLCHORO - ONYORE/4776 , yet the said land had already been subdivided where she got her title before the said inhibitory order was issued. She insists the inhibitory order is bad in law and an abuse of the court process as land parcel number KAJIADO/OLCHORO - ONYORE/4776 does not exist as there are independent titles issued and transferred from the said title before the orders were granted. She claims that the suit as well as the inhibitory orders directly affects her and interferes with her proprietary rights as a bona fide registered owner of the suit land and she should be enjoined in this suit as her presence before court is necessary to enable it effectually and completely adjudicate upon and settle all the matters relating to the suit.

She reiterates that the inhibition orders should be vacated.

The 1st Respondent filed a replying affidavit sworn by JOHN SIFA KEAH who is the head of Secretariat for the Policyholders' Compensation Fund where he deposed that land parcel numbers

KAJIADO/KISAJU/59 and KAJIADO/OLCHORO - ONYORE / 4776 were duly registered in the name of United Insurance Company Limited. He avers that United Insurance Company Limited was placed under statutory management in July, 2015 and in accordance with the provisions of section 67 of the Insurance Act, there has been a moratorium over the assets and liabilities of the company. He confirms that the statutory manager of United Insurance Company Limited was in possession of the original title deed in respect of KAJIADO/OLCHORO - ONYORE/4776 during the purported subdivision in 2011 and therefore any such subdivision was a nullity and illegal. He affirms that this miscellaneous cause vide application dated 8th November, 2011 was filed because the Respondents had refused to register cautions against the title documents culminating in the court issuing the inhibitory orders. He reiterates that on the issue as to whether orders of inhibition should be granted or not has already been heard and determined in the application dated 8th November, 2011 and the subject suit property being KAJIADO/KISAJU/59 has already been passed to 3rd parties in an effort to recover the aforementioned liabilities estimated at Kshs. 2.3 billion in the preliminary status report.

Both parties filed their written submissions which I have considered.

Issues and Determination

Upon perusal of the interested party Chamber Summons application dated 27th April, 2016 and filed on 15th June, 2016 including the supporting and replying affidavits plus the annexures thereon, the following are the issues for determination:

- Whether the interested party can be enjoined in this miscellaneous cause at this stage.
- Whether the interested party is entitled to the orders of removal of inhibition order granted in November, 2011.

On the question as to whether the interested party can be enjoined in this application at this stage, the question we need to ask is who is an interested party. Black's Law Dictionary 9th Edition, page 1232 defines an interested party as;

"A party who has a recognizable stake (and therefore standing) in the matter"

The interested party seeks to enjoin the suit as she bought a resultant subdivision from land parcel number KAJIADO/OLCHORO ONYORE 4776. She averred that she is adversely affected by the inhibition order that had been issued in 2011. I note the application herein was commenced within a miscellaneous cause which has already been heard and determined. Further that the interested party/applicant is not yet a party to this miscellaneous cause. There are no clear provisions within the Civil Procedure Rules and Civil Procedure Act as to whether an interested party can enjoin a suit commenced by a miscellaneous cause if orders granted therein affect them adversely.

In the case of **ELC Mombasa Civil Case 18 of 2013** the learned Judge held that: ***' that for interested parties they only require that involvement to be necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the suit. As interested parties the applicants need only interest in the subject of the suit or in any other relevant matter affecting the suit.'***

In the case of **Zephir Holdings Limited v Mimosa Plantations Limited, Jeremiah Matagaro & Ezekiel Misango Mutisya (2014) eKLR** the court held as follows:..... ***it is my considered view therefore that the 1st interested party is not properly before the court. He ought to have sought leave of court to be enjoined in the suit first before moving on a spree for other far reaching order.'***

Order 1 Rule 10 of the Civil Procedure Rules stipulates as follows:

'(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any

other person to be substituted or added as plaintiff upon such terms as the court thinks fit. (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 party improperly joined, whether as plaintiff or defendant, be struck out, and 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.'

In so far as there are no clear provisions in the Civil Procedure Rules on who an interested party is, I however note that the Applicant claims to have been adversely affected by the inhibition orders of the Court granted in November, 2011 and hence as a recognizable stake in this matter. Since both the Applicant and 1st Respondent are staking claim over the suit land, and the Applicant who was an innocent purchaser was not involved in this miscellaneous cause, the Court finds that these are issues best determined if both parties are given a chance to be heard. Although the miscellaneous cause was already determined and there are no provisions to review it, but land matters being very emotive, I find that the Applicant has a constitutional right of being heard in a Court of law and will allow her to be enjoined as an interested third party in this miscellaneous cause. I will further make an order to allow parties to fix the miscellaneous cause for interpartes hearing.

As to whether the interested party is entitled to the orders of removal of inhibition order granted in November, 2011.

Since both the Applicant and the 1st Respondent are staking claim over the suit land, with the sanctity of the title being in dispute, I will decline to set aside the inhibitory orders entered herein in November, 2011 until this miscellaneous cause is heard and determined.

The costs will be in the cause.

The parties are urged to set the miscellaneous cause for hearing as soon as possible.

Dated signed and delivered in open court at Kajiado this 19th day of October, 2017.

CHRISTINE OCHIENG

JUDGE