



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 287 OF 2012

STEPHEN MUTERU KABURU.....PLAINTIFF

VERSUS

HARON MUCHIRI MUTERU.....DEFENDANT

AND

HUMPREY MUTERU KABURU.....PROPOSED INTERESTED PARTY

RULING

(Application to amend counterclaim to introduce a new party; application allowed).

1. The application before me is that dated 22 September 2015 filed by the defendant. It seeks orders to enjoin one Humphrey Muteru Kaburu as interested party to these proceedings and an order of injunction to restrain the plaintiff and the interested party from selling or in any other way dealing with the land parcel Bahati/Kabatini Block 1/2512 until this case is finalized. Before I go to the reasons why the applicant has thought it fit to seek these orders, I think it is important that I give a little background on this suit.

2. This case was commenced on 13 October 2005 by way of plaint. In his plaint, the plaintiff averred that he is the registered proprietor of the land parcel Bahati/Kabatini Block 1/2512 (hereinafter referred to as "the suit land"). He pleaded that in December 1993, the applicant who was then living in Molo South, asked the plaintiff for assistance as he had been forced to leave his family home owing to tribal clashes. It is averred that on 18 April 2005, the applicant placed an unlawful restriction in the register of the suit land and is demanding a share of the property. In the suit, the plaintiff asked for orders that the applicant be evicted from the suit land; removal of the restriction; and a perpetual injunction to restrain the applicant from the suit land.

3. The applicant entered appearance and filed a defence and counterclaim. He inter alia pleaded that the plaintiff is registered as trustee of the suit land for the benefit of the applicant and their mother. He averred that this land was initially owned by their father until 16 April 1989 when the plaintiff procured registration by way of fraud and laid claim to the whole of the land. In the counterclaim, he asked that it be declared that the plaintiff holds a half share of the land in trust for the applicant; and for a cancellation of the title of the plaintiff so that the applicant may get his share.

4. Nothing much transpired in the matter as it appears that the plaintiff relocated to the United States of America. That explains the reason why this suit has been pending in court since the year 2005. In his

