



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 430 OF 2013

BERNARD MUGO NDEGWA.....PLAINTIFF

VERSUS

JAMES NDERITU GITHAU)

JOHN GIKANDI MAGONDU)

JACKSON WACHIRA WAMAI)DEFENDANTS

AND

ELISHIBA WANGITHI MUGO)

**JOSEPH KARIUKI MUGO.....INTENDED INTERESTED
PARTIES**

RULING

BERNARD MUGO NDEGWA (the plaintiff herein) filed this suit against the defendants on 30th October 2006 claiming that whereas he was the registered proprietor of land parcel No. KIINE/GACHARO/1476 and had sold two (2) acres thereof to the 1st defendant in 1996, the 1st defendant had secretly and without his knowledge or authority proceeded to sub-divide the said land into eight portions i.e. KIINE/GACHARO/1769, 1770, 1771, 1772, 1773, 1774, 1775, and 1776. The 1st defendant had then proceeded to transfer some of the resultant sub-divisions to himself and the 2nd and 3rd defendants illegally. The plaintiff therefore sought the cancellation of the resultant title deeds.

The defendants filed separate defences with the 1st defendant confirming that he purchased two (2) acres from the plaintiff who also gave him one (1) acre as a gift. He however denied having transferred any land to the 2nd and 3rd defendants.

The 2nd defendant pleaded that he purchased parcels No. KIINE/GACHARO/1770 and 1771 from the plaintiff and is therefore a bona fide purchaser.

The 3rd defendant denied any knowledge of transactions involving the said parcels.

The suit is part heard with the plaintiff having testified on 14th April 2016 after which the 3rd defendant sought an adjournment to enable him engage an advocate which he eventually did but for one reason or the other, the case has not proceeded.

On 5th July 2017, **ELISHIBA WANGITHI MUGO** and **JOSEPH KARIUKI MUGO** who are children of the plaintiff and the Intended Interested parties herein filed a Notice of Motion seeking the orders to be enjoined as parties to this suit. The application is premised on the grounds set out therein and is also supported by their joint affidavit.

The gravamen of the application is that they are children of the plaintiff and their interest in the suit is to have him sub-divide the remaining land parcel measuring six (6) acres to them. They also allege in their affidavit that the plaintiff has filed this suit in bad faith and state that the plaintiff indeed sold land to the 1st defendant.

The application is opposed and the plaintiff has filed a replying affidavit describing the application as frivolous, vexatious and an abuse of the process of the Court meant to frustrate him into abandoning this case. He has deponed further that this application has come late when he has closed his case and all that the Intended interested parties want is for him to sub-divide his land and give them a share yet they can caution the land if they wish.

The 3rd defendant filed grounds of opposition arguing that the Intended interested parties application have no interest known in law and their application only seeks to introduce a separate cause of action and is therefore an abuse of the process of the Court.

The application was canvassed orally.

I have considered the application, the replying affidavit by the plaintiff and the grounds of opposition by the 3rd defendant.

The Intended interested parties are acting in person and as can be expected, their “*home-made*” Notice of Motion does not cite the legal provisions upon which it is premised. Nonetheless, being an application for joinder, it must be considered in light of the provisions of **Order 1 Rule 10 (2) of the Civil Procedure Rules** which provides as follows:

“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”.

At the beginning of this ruling, I summarized the respective cases of the plaintiff and defendants in this case and looking at the reasons advanced by the Intended interested parties for their joinder in these proceedings, I am not at all satisfied that they meet the criteria set out in ***Order 1 Rule 10 of the Civil Procedure Rules***. The applicants have not demonstrated how their joinder in these proceedings will enable the Court to “***effectually and completely***” adjudicate upon the questions involved in this dispute. The land in dispute belongs to the plaintiff as per his pleadings and the applicants appear to want their father to give them a share thereof. But what the plaintiff is seeking in this suit is to recover and consolidate what he feels was illegally taken from him by the defendants. I fully endorse the plaintiff’s sentiments as expressed in paragraph ten (10) of his replying affidavit when he says:

“That if their fear is that I will sell the land to a third party, which intentions I do not have, then they can caution the land to avoid any dealings without their knowledge. There is nothing in this case that require their participation for them to be enjoined as Interested parties”

There is nothing to stop the Intended interested parties from filing their own case against their father if they think they have a claim against him. However, in the circumstances of this case, I am not satisfied that they have demonstrated any stake in the land subject of this suit and which right stands to be prejudiced if they are not enjoined in this suit. I am not therefore persuaded that their application to be

enjoined in this suit has merits.

The up-shot of the above is that the Intended interested parties Notice of Motion dated 5th July 2017 is dismissed. I make no order as to costs.

B.N. OLAO

JUDGE

24TH NOVEMBE, 2017

Ruling delivered, dated and signed in open Court at Kerugoya this 24th day of November 2017

Mr. Ombachi for Mr. Kagio for Plaintiff - present

1st Defendant – absent

2nd Defendant - present

Mr. King'ori for 3rd Defendant –absent

Intended interested parties – absent.

B.N. OLAO

JUDGE

24TH NOVEMBER, 2017