



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CASE NO. 321 OF 2013

JOSEPH KIPKORIR KIPSEREM.....PLAINTIFF

VERSUS

WILLIAM CHERONO.....DEFENDANT

RULING

This is the ruling in respect of an application dated 2nd June 2015 brought by way of Notice of Motion by the Interested Party/applicant for orders that:

1. This application be certified as urgent and its service be dispensed with in the first instance.
2. The proceedings herein and all orders emanating therefrom be stayed pending the inter partes hearing and final determination of this application.
3. There be an order enjoining one MARY JELAGAT KIBIWOT to the proceedings as an interested party.
4. Upon prayer No. 3 being granted, the court do set aside all the proceedings and any orders made therein in favour of any party herein and this matter to start de novo in any inter partes or the main suit in any event.

This matter proceeded for hearing of the current application on 1/11/2017. I do not understand why a matter that was filed way back in 2015 under certificate of urgency has never been heard till now. Counsel made their oral submissions in respect of the application.

Interested Party's Counsel's Submissions

The Applicant herein, one MARY JELAGAT KIBIWOT is seeking under prayer No. 3 to be enjoined to the proceedings as an "Interested party as she has an interest in the suit. Mr. Kiboi counsel of the applicant submitted that the proposed interested party has an interest in the subject parcels of land known as TINGWA/CHESUBET/196 & 255. It was his submission that the plaintiff commenced this suit but did not enjoin the interested party either as a defendant or a third party. He stated that the Interested party was allotted plot No. 255 and the plaintiff was allotted plot No. 196 but at the time of occupying the land, the applicant was shown plot No. 196 which she occupied and developed.

Mr. Kiboi Counsel for the interested party submitted that when the plaintiff came to take possession, the IP had already taken possession thereby agreeing to exchange the parcels of land between them. Counsel referred the court to paragraphs 3 & 12 of the plaint which seeks for an injunction against the defendant and any other party which may include the applicant who is in occupation of plot no. 196. Counsel

further submitted that the surveyor's report which was filed in court indicates in paragraph 4 the Mrs. MARY CHELAGAT BIWOT is in occupation of plot No 196. He therefore urged the court to allow the application.

Defendant's Counsel's Submissions

Mr. Momanyi Counsel for the defendant opposed the application and relied on the replying affidavit filed in court. He submitted that the plaintiff filed this matter on parcel No. 196 and not 255 and the defendant's defence is that he only claims parcel No. 255. He further submitted that enjoining an Interested party will not serve any purpose. It was Mr. Momanyi's submission that the Interested party can only file an application to be enjoined as a plaintiff or a defendant so that she can file a counterclaim. Counsel also submitted that the survey report filed in court is clear on who owns which parcel of land and therefore the application should be dismissed.

Mr. Kiboi in response submitted that it is incumbent upon an interested party to demonstrate that he or she has an interest in the subject matter and that there is no bar in bringing a claim within the same suit to avoid multiplicity of suits. He reiterated his earlier submissions and urged the court to allow the application as prayed.

Analysis and determination

This is an application for enjoining an Interested party to this suit. The test and threshold as to whether a party should be enjoined in a suit as an Interested Party is that a party must demonstrate that they have a stake in the case, must have an interest in the subject of the suit and that the enjoining of a party will avoid filing of multiplicity of suits and save the courts time. See the case of Maria Soti Educational Trust -vs- Registrar of Titles & Another 2014 eKLR, where Sila Munyao J highlighted the thresholds.

Will the applicant be affected by the decision of this court looking at the prayers sought in the plaint? It was submitted that the plaintiff and the applicant were allotted plots Nos. 196 & 255 respectively and the applicant took occupation of the plaintiff's parcel of land and has since developed the same. The parties had agreed to exchange the said plots in view of the occupation on the ground. I find that the prayers would substantially affect the rights of the applicant.

Looking at the proceedings, I notice that on 15/7/13 parties entered into a consent to have a surveyor visit the disputed parcels of land and establish who is in occupation of parcel Nos. 196 and 255 TINGWA/CHESUBET SETTLEMENT SCHEME. A survey report was subsequently filed and it established that MARY CHELAGAT BIWOT the applicant herein is in occupation of parcel No. 196.

I have considered all the arguments by both Counsel for and against the application for enjoining the applicant as an interested party and the supporting documentation herein and I have come to the conclusion that the issues for determination are as follows:-

- 1) Whether the applicant may be enjoined as an interested party in this suit in accordance with the Civil Procedure Rules?
- 2) Whether the applicant has demonstrated that she has a stake or an interest in the subject of the suit or in other relevant matter affecting the suit?
- 3) Whether the interested party will be affected by the decision in this suit and finally that enjoining the interested party will avoid multiplicity of suits and save judicial time?

Courts have often used the provisions of Order 1 Rule 10 (2) to have persons come into a case as interested parties. That provision of the law provides as follows :-

- 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.

It should be noted that there is no procedure under the Civil Procedure Act and Rules for the joinder of 'interested parties'. The procedure for joining a necessary party is indicated by the Order 1 rule 10 (2) of the Civil Procedure Rules is to be available to either party to move the court, so that a person who is not a party but who seeks to join may be joined in the case and invoke the inherent jurisdiction of the court and the overriding objective of the civil process. The applicant's Counsel has invoked the inherent jurisdiction of the court and the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of disputes.

In determining whether the applicant should be enjoined in this suit as an Interested Party, I am further guided by several decisions of the courts.

In the case of **Communications Commission of Kenya & 30 others versus Royal Media Services Ltd & 7 others Supreme Court of Kenya at Nairobi in petition No. 14 of 2014**, stated under paragraphs 22 and 23 of their ruling as follows:-

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause....”

Would it be tenable for the applicant to file a separate suit against the defendant over the same subject matter? My answer to this would be that such a route would increase costs for the parties and make an unfair demand on the courts time and other resources which can be put to better use to serve other litigants. The other worst-case scenario would be where similar disputes over the same subject matter have different outcomes which can embarrass the courts.

I therefore find that the application is merited and allow the same to the extent that the applicant be enjoined as an interested party. Prayers Nos. 2 & 4 for setting aside all proceedings and hearing the case de novo are denied.

The applicant will file a response to the claim if any, within Fourteen (14) days from the date of this ruling, and the plaintiff and defendant may file a reply, if any, within fourteen days of service of the response, after which the matter will proceed for pre-trial directions.

Dated and delivered on this 22nd day of November, 2017

M.A ODENY

JUDGE

Read in open court in the presence of:

Mr. Mukabane holding brief for Mr. Kiboi for the interested party

Mr. Isiji holding brief for Mr. Momanyi for the Defendant.

Mr. Koech – Court Assistant