



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 32 OF 2017

MARTA WANGECHI KIMANI - PLAINTIFF

VS

KENNETH KAUNDA KIMANI - 1ST DEFENDANT

JAMES IRUNGU KANYUGA - 2ND DEFENDANT

JOSECK IKAI MUKUHA - 3RD DEFENDANT

UNITAS SACCO SOCIETY LTD - 4TH DEFENDANT

LAND DISTRICT REGISTRAR MURANG'A - 5TH DEFENDANT

THE HON ATTORNEY GENERAL - 6TH DEFENDANT

EUNICE WANGUI KAROKI - INTERESTED PARTY

RULING

1. The interested party one Eunice Wangui Kimani moved this Court by way of Notice of Motion filed on 15/9/17 seeking enjoinder in the above suit as an Interested Party. Her reason for joinder is because she is the wife of the 1st Defendant and further that she gave consent to the transfer of the suit property LR LOC.12/SUB-LOC 1/GAKIRA/T357 to be transferred from 1st Defendant to the 2nd Defendant, which transaction is being challenged by the Plaintiff on grounds that the same is illegal for want of her spousal consent. That the consent of the Plaintiff was not sought nor obtained thus rendering the transaction fraudulent.

2. In her supporting affidavit the Applicant deponed that her husband had two plots in Kangema which he gave the Applicant and the Plaintiff respectively. That LR LOC.12/SUB-LOC 1/GAKIRA/T357 belonged to her and not the Plaintiff hence the reason why she gave consent to its sale. That the Plot for the Plaintiff remains unsold.

3. The 1st – 5th Defendants did not oppose the application.

4. The Plaintiff in her replying affidavit averred that she is married to Samuel Kimani Karoki since 1959. That the Applicant is not a wife to the said Karoki. That the LR LOC.12/SUB-LOC 1/GAKIRA/T357 was registered in the name of her husband Karoki and was transferred without her consent. That the Applicant had no interest in the properties that belonged to her and her husband Karoki. She denied that

the Applicant had any interest in the suit property nor any of their family properties and therefore could not grant any spousal consent to the transfers of the suit property.

5. It is her contention that even if the Applicant was a wife, which she denies, then both their consents should have been obtained.

6. Both Applicant and respondent filed written submissions which I have carefully considered.

7. The Applicant in her submissions pleaded with the Court to admit her as an interested party to provide proof that she had the capacity to give consent for the sale of the property as a spouse of Samuel Kimani Karoki.

8. In opposing the application the Respondent stated that the application does not meet the threshold set in the Civil Appeal case of **Francis Kariuki Muruatetu & Anor. Vs Republic & 5 Others (2016) eKLR** where the Court held that the Applicant must demonstrate the personal interest that she has in the matter by laying sufficient grounds before the Court; the prejudice she would suffer if she is not enjoined as interested party; set out the case that she intends to make before the Court and demonstrate the relevance of the evidence being proffered to the Court in determining the issue in controversy.

9. Further that the application is frivolous, vexatious and is brought in bad faith in the sense that it was filed to hijack the hearing bearing in mind that the parties had had their day in enjoining other parties but the Advocate who also is on record for 1st Defendant did not seek to enjoin the applicant then. In her opinion the application seeks to introduce new witnesses to the suit, probably and new evidence with the sole purpose of derailing the trial of the main suit. That it is solely intended to assist the Defendants case.

10. Having considered the submissions, the rival affidavit evidence of the parties and case law, I now wish to determine the issue which is whether the Applicant has met the threshold of joinder as an interested party.

11. Order 1 rule 10 (2) of the Civil Procedure Rules empowers the Court 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 a person who ought to have been joined or whose presence before the Court is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the suit.

In this instant case the Applicant a third party has made the application seeking to be enjoined as an interested party. Who is an interested party? **Blacks Law Dictionary 9th Edition at page 1232** defines an interested party as;

“a party who has a recognizable stake (and therefore standing) in a matter”.

The Applicant has stated that she is married to Samuel Karoki and that the said Karoki gave her the suit property and that is the premise upon which she has granted spousal consent to the transfer of the property from the said Karoki to the 2nd Defendant. The claim of the Plaintiff is that the suit property was transferred fraudulently, the same having been done without obtaining her spousal consent as the wife of Karoki. The applicant notwithstanding her averments that she is married to the said Karoki has not presented any material as to the when, where and how she married the said Karoki. That would be necessary to answer the question whether or not she is a spouse.

12. Does this then make her a necessary party to enable the Court adjudicate the issues in controversy? The issues in controversy as explained above is that of an alleged transaction that was done without spousal consent. The Applicant has stated that she has information that will assist the Court to determine the matter to its conclusion. For one to show the interest in the matter at hand, she would have to demonstrate that she is a spouse or show evidence leading to being a spouse in which event it would entitle her to an overriding interest in the property which would be prior or after the marriage. Secondly, she must show that she made a financial contribution to the property. This would entitle her to a

beneficial interest in the suit property. None of the above has been satisfied.

13. What interest does she suffer if she is not enjoined? **See Francis Karioki Muruatetu supra.** The root of the dispute is ownership. Because she has not satisfied that she is a spouse and or made any financial contribution to the acquisition of the suit property, then she would not be prejudiced if she is not enjoined into the suit. There is no evidence of prejudice if she is locked out of the suit. The claim of ownership is one that is already before the court and in my considered view her joinder will not add any value to the parties in this suit.

14. In my view the Court is not satisfied that the Applicant has demonstrated her interest in the matter sufficiently to warrant the Court to admit her as an interested party. In any event the Applicant has not demonstrated how she stands to be prejudiced if she is not admitted into the suit.

15. In the end I hold and find that the application fails and the same is dismissed with costs to the Plaintiff/Respondent.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF DECEMBER, 2017

J.G. KEMEI

JUDGE