



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 3 OF 2006**

**FALENT NYONGESA MUSUNGU & 76 OTHERS.....PLAINTIFFS**

**VERSUS**

**KAPSITWETI RIVER ESTATE LTD.....1ST DEFENDANT**

**KABARAK FARM LTD.....2ND DEFENDANT**

**ABMA INVESTMENTS LTD.....3RD DEFENDANT**

**KIPSINENDE FARM LTD.....4TH DEFENDANT**

**LINSHIRE LTD.....5TH DEFENDANT**

**AND**

**ELDORET EXPRESS CO. LTD.....INTERESTED PARTY**

**RULING**

1. This is a ruling in respect of an application filed by Eldoret Express Limited (Applicant) which seeks to be enjoined in this suit as an interested party. The applicant contends that in or around 2005, it purchased **LR.No. Kwanza/Namanjalala Block 4/4** from Linshire Ltd (suit land). It later processed and obtained title deed which was issued on 20/6/2006.

2. In June, 2015 a friend of the applicant's director informed him that he had seen a suit in which the respondents had sued Linshire Ltd from whom the applicant had bought the suit land. The applicant's director **Mr. Simon Mbugua Thungu** came to the registry and perused the court file. He confirmed that indeed the respondents had filed proceedings against Linshire Limited among others. He then instructed his lawyers to file an application seeking to enjoin the applicant as an interested party.

3. The applicant contends that it purchased the suit land from Linshire Ltd and a title in its favour has been given. It therefore contends that its interests will be adversely affected by any order which the court may ultimately give. The applicant further contends that the respondents knew that it had interest in the suit land because it had registered a caution against the title to the suit land in 2005 well before the respondents filed their suit.

4. The applicant's application is opposed by the respondents based on grounds of opposition and replying affidavit filed on 29/7/2015 and 18/9/2015 respectively. The respondents contend that the applicant's

application has been made belatedly and that there is no resolution filed confirming that the applicant is authorizing the filing of the proceedings herein. The respondents further contend that the applicant has been sending its agents to monitor proceedings in this case and that in any case, the respondents do not intend to move against the applicant as they have already established their claim of adverse possession and if the applicant has any claim, it should direct it to Linshire Ltd.

5. I have carefully gone through the applicant's application, the opposition thereto by the respondents and the submissions of counsel. The respondents had brought a suit against five companies seeking orders that they had acquired the parcels held by the five companies by adverse possession. One of the defendants in the suit is Linshire Ltd which was the owner of **LR. No. Kwanza/Namanjalala Block 4/4** which is **193.48 hectares**. This property was later bought by the applicant who obtained title on 20/6/2006.

6. Prior to the applicant obtaining title, it had lodged a caution in its favour through one of its directors Simon Mbugua Thungu. This was on 25/9/2005 according to an extract of the register in respect of the suit land. The issue for determination is whether the applicant should be allowed in these proceedings as an interested party.

7. In an application for joinder as an interested party, the court is required to be satisfied that the applicant has interest in the subject matter of the suit. In the instant case, the applicant has demonstrated that it had interest in the subject matter of this proceedings that is the suit land. The applicant had lodged a caution in its favour on 25/9/2005 well before this suit had been filed. The applicant was not aware of the suit until June, 2015. It cannot therefore be blamed for not having made this application in time. It wasn't a party and no pleadings were expected to be served upon it.

8. The respondents claim that the applicant has been sending representatives to monitor this suit is unfounded. The applicant has demonstrated that it has sufficient interest in the suit. It ought to be allowed as an interested party. The joinder of the applicant as an interested party will not prejudice the interests of the respondents. This is a claim for adverse possession and change of ownership does not affect the claim. I therefore find that this is a proper case where the interested party should be allowed in the proceedings as an interested party.

9. I therefore allow the applicant's notice of motion dated 13/7/2015 as prayed. The interested party should file and serve its pleadings in this case within 14 days from today.

It is so ordered.

Dated, signed and delivered at Kitale on this **21st** day of **January, 2016**.

**E. OBAGA**

**JUDGE**

In the presence of Mr. Okara for the Respondents and Mr. Ingosi for Mr. Kimani for Applicant.

Court Assistant – Isabellah.

**E. OBAGA**

**JUDGE**

**21/01/2016**