



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU**

**ELC NO 317 OF 2015**

**KENYA ANTI-CORRUPTION COMMISSION.....1<sup>ST</sup> PLAINTIFF**

**THE RIFT VALLEY DEVELOPMENT TRUST REGISTERED TRUSTEES T/A**

**TECHNOLOGY FARM .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**FRANCIS ZAASITA KIPTOO MENJO AND**

**36 OTHERS .....DEFENDANTS**

**RULING**

***(Application to be enjoined as interested party; principles to be applied; suit over certain properties; claim that the defendants fraudulently obtained title and the same should be cancelled; applicant having purchased a portion of one of the titles in issue; whether the fact that he is purchaser entitles him to be enjoined as interested party; joinder only where necessary for the determination of the issues in the suit; issue in the suit related to title of the defendants not title of the applicant; his inclusion in the case not necessary for the determination of the issues; application dismissed)***

1. This ruling is in respect of an application dated 15 January 2016 filed by one Sammy Njoroge Konye who wishes to be enjoined to these proceedings as interested party. He also wants leave to file pleadings, affidavits and such other necessary documents thereof in response to this suit. Before I go to the grounds upon which this application has been filed, I think it is necessary to give a little background on this case.

2. This case was commenced by way of plaint filed on 25 July 2006. The Kenya Anti-Corruption Commission was the sole original plaintiff with 37 persons having been sued as defendants. The case concerns ownership of the land parcels L.R No. 3380/2 measuring approximately 351 hectares; L.R No. 5636/1 measuring approximately 421 hectares; L.R No. 7385/5 measuring approximately 612 hectares; L.R No. 7018 measuring approximately 25 acres; and L.R No. 37388 measuring approximately 903 acres. It was pleaded that these parcels of land were registered in the name of the Rift Valley Development Trust Registered Trustees, a Public Trust incorporated under The Land (Perpetual Succession) Act, Cap 286 (now repealed). It was averred that the object of the trust was to establish institutions and schemes for the advancement of education and development for the people of Rift Valley and the public at large. In the year 1978, it established the Rift Valley Institute of Science and Technology (RVIST). At some point the 1<sup>st</sup> defendant was employed by RVIST. It is claimed that in February 2007, the 1<sup>st</sup> defendant unilaterally, and without any colour of right, caused the consolidation of three of the Trust’s parcels of land, namely L.R No. 7385/5, LR No. 3380/2 and LR No. 5636/1, thereby creating the title L.R No. 22771. This land was then caused to be subdivided into six parcels namely L.R Nos. 22771/1 to LR No.

22771/6. Subsequently, L.R No. 22771/5 was transferred to the 2<sup>nd</sup> defendant (Francklem Enterprises Ltd); LR No. 22771/6 to the 3<sup>rd</sup> defendant (Little Meadows Ltd); LR No. 22771/4 to the 4<sup>th</sup> defendant (Romly Agencies Ltd); and L.R No. 22771/2 to the 5<sup>th</sup> defendant (Betsy Chelangat Irongi). The 5<sup>th</sup> defendant then sold the land to the 6<sup>th</sup> defendant (Appricot Apples Promotions Systems Ltd), who in turn caused the land to be subdivided into 8 parcels. Two of them, namely LR No. 22771/10 and LR No. 22771/11, were transferred to the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> defendants (Francis Njenga Mwangi, Samuel Ngugi Bechai and Sammy Mwenji) and the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> defendants (Joseph Kariuki Karanja, Fredrich Njenga Munya and Zakayo Njuguna Mahiti) respectively. The 7<sup>th</sup> to 12<sup>th</sup> defendants later caused the conversion of these titles from the regime of the Registration of Titles Act (now repealed) to the regime of the Registered Land Act (now repealed). The land parcels now became registered as Njoro Ngata Block 1/3409 and 3410. These two land parcels Njoro Ngata Block 1/3409 and 3410, were then subdivided to create 48 titles being Njoro Ngata Block 1/3495-3442. These parcels were conveyed to the 13<sup>th</sup> to 37<sup>th</sup> defendants who are individuals.

3. In this suit, the plaintiff seeks a declaration that there was fraud in the manner in which the original titles were consolidated, and later subdivided and transferred to the various persons. They want all these subsequent titles cancelled.

4. The applicant herein is founded on the following grounds :-

*(a) That the applicant bought from the 6<sup>th</sup> defendant a portion of land measuring 1 acre.*

*(b) That the portion of land aforesaid was to be excised from the parcel of land known as LR No. 22771/8 registered in the name of the 6<sup>th</sup> defendant.*

*(c) That upon the purchase of the property the applicant took possession of the parcel of land and has been in occupation thereof pending the 6<sup>th</sup> defendant's transfer of the same to him.*

*(d) That the applicant learnt that LR No. 22771/8 is the subject of the suit herein.*

*(e) That the outcome of this suit will directly affect his rights in the suit land and unless admitted as a party to this suit he stands to be prejudiced by being condemned unheard.*

5. To his supporting affidavit, the applicant has annexed a copy of the sale agreement between himself and the 6<sup>th</sup> defendant. He has also annexed some proof of payment for the land. He has repeated that the outcome of this suit will directly affect his rights in the land and that unless admitted, he stands to be condemned unheard.

6. None of the parties in the suit opposed the application for joinder. That does not however mean that the application must be allowed.

7. The starting point is to note that in litigation, the plaintiff has a wide discretion on the person he wants to sue. Inevitably, the plaintiff will sue the person from whom the remedy he seeks is to be derived from. In this case, the plaintiffs have properly sued the persons who are registered proprietors of the land parcels, for it is these titles, which are registered in the names of the defendants, that the plaintiff seeks cancellation of. The court of course also has discretion to order the inclusion of a person into, or the removal of a person, in a suit. This is contained in Order 1 Rule 10 which provides as follows :-

*10. Substitution and addition of parties [Order 1, rule 10.]*

*(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any*

*other person to be substituted or added as plaintiff upon such terms as the court thinks fit.*

*(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.*

*(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.*

*(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.*

8. There is no explicit provision in the Civil Procedure Rules for the inclusion of a person as interested party to a suit. The courts generally utilize the wide discretion given in Order 1 Rule 10, specifically Order 1 Rule 10(2), to add an interested party to the suit. Order 1 Rule 10 (2) does give the court power to enjoin a party to the suit , “*whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit...*”. In my view, the court therefore needs to assess whether the joinder of the person is necessary.

9. The position of the applicant is that since he purchased a portion of the suit property in issue, he therefore needs to be enjoined to the proceedings lest he is condemned unheard.

10. The argument issue in this case is not dissimilar to that which arose in the case of ***Skov Estate Ltd & Others vs Agriculture Development Corporation & Another (2015) eKLR***. The litigation in the said case involved certain land and various persons sought to be enjoined as interested parties on the claim that they had purchased portions of the land under litigation. I declined the application, and I had this to say on the matter :-

*Paragraph 18. In my view, for one to convince the court that he/she needs to be enjoined to the suit as interested party, such person must demonstrate that it is necessary that he/she be enjoined in the suit, so that the court may settle all questions involved in the matter. It is not enough for one to merely show that he/she has a cursory interest in the subject matter of litigation. Litigation invariably affects many people. A judgment or order in most cases does not only affect the litigants in the matter. It does have ramifications for others as well and one may very well argue that these others have an interest in the litigation. That is a fair argument, but a mere interest, without a demonstration that the presence of such party will assist in the settlement of the questions involved in the suit, is not enough to entitle one be enjoined in a suit as interested party. In other words, there needs to be a demonstration that the interest of the person goes further than “merely being affected” by the judgment or order. It must be shown that the presence of that person is necessary, so that the issues in the suit may be settled, and that if the person is not enjoined, the court may not be fully equipped to settle the questions in the suit or may be handicapped in one way or another. A joinder may also be allowed if the intended interested party has a claim of his own, which in the circumstances of the matter, needs to be tried, or is convenient to be tried alongside the claims of the incumbent plaintiff and defendant. The threshold for joinder of an interested party should not be too low, or else, this is prone to open doors for busybodies to be joined to proceedings, merely to spectate or confuse the issues in the matter. Apart from the above, whether or not to enjoin a person as an interested party, must be looked at within the context and surrounding circumstances of each particular case.*

10. In the above suit, I declined the application as in my view, the interest of the applicant was contingent on the success or failure of the parties before court.

11. I see no need to depart from the reasoning above. I still hold the view that a person who seeks to be enjoined as interested party, must demonstrate to the court, that his presence is necessary in the adjudication of the matters that are before court. Alternatively, if he has a claim which is convenient to be tried alongside the issues before the court, he may be enjoined. The reasoning behind this is that you would not wish to have a scenario where the litigation is burdensome and is loaded with persons who at the end of the day are mere spectators and make no input whatsoever to the matter. The addition of a party entails an additional yoke on the litigants, not least in service of process, judicial time and cost. You wouldn't want this extra tax unless it is absolutely necessary.

12. The applicant herein holds no title to any of the properties in issue in this case. What he has purchased is 1 acre of one of the land parcels in issue. He has averred that if the litigation proceeds, he will be condemned unheard. However, the question in this matter is whether or not the titles of the defendants, the 6<sup>th</sup> defendant included, ought to be upheld. We have no litigation on whether or not the sale to the interested party ought to be upheld. His purchase of a portion of the suit land is not in issue in this litigation. I in fact wonder what input he will have in the determination of the question whether the title of the 6<sup>th</sup> defendant was properly acquired or whether it should be cancelled. His interest at the end of the day is contingent on whether or not the title of the 6<sup>th</sup> respondent will be upheld or cancelled. It is only then that his rights may crystalize and he can then pursue the 6<sup>th</sup> defendant or affirm his contract with the 6<sup>th</sup> defendant. His issue is completely separate from the matters in this litigation. I cannot see how it can be argued that his presence is necessary in the determination of whether or not the title of the 6<sup>th</sup> defendant ought to be cancelled or upheld. True, he stands to be affected by any decision made here. But the mere fact that one may be affected by an outcome of litigation, does not mean that such person is a necessary party in the litigation. Clearly, I am not satisfied that the presence of the applicant is needed in the circumstances of this case.

13. I therefore proceed to dismiss this application. I however make no orders as to costs as neither party was keen to oppose it.

14. It is so ordered.

**Dated, signed and delivered in open Court at Nakuru this 15<sup>th</sup> day of March 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

Ms. Maina for 1st plaintiff.

Mrs Rotich present for 2<sup>nd</sup> plaintiff

Mr Konosi present for applicant intended interested party and also for 7<sup>th</sup> – 8<sup>th</sup>, 10<sup>th</sup> and 22<sup>nd</sup> defendants.

M/s Gitau Ngige for 1<sup>st</sup> defendant: absent.

N/A on part of Ms Kinyanjui Njau present for 2<sup>nd</sup> & 5<sup>th</sup> defendants.

N/A on part of M/s Ochieng, Kibet & Ohoga for 3<sup>rd</sup> & 4<sup>th</sup> defendants.

N/A on part of M/s Ngoge & Co for 6<sup>th</sup> defendant

Mr Waiganjo present for 9<sup>th</sup>, 12<sup>th</sup> - 18<sup>th</sup>, 20<sup>th</sup> - 21<sup>st</sup> - 23<sup>rd</sup>, 26<sup>th</sup>, 28<sup>th</sup>, 31<sup>st</sup>, 32<sup>nd</sup>, 34<sup>th</sup>, 36<sup>th</sup> and 37<sup>th</sup> defendants

Mr Karanja Mbugua present for 11<sup>th</sup>, 19<sup>th</sup>, 25<sup>th</sup>, 27<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup>, 33<sup>rd</sup>, 35<sup>th</sup> defendants.

Court Assistance: Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**