



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 251 OF 2012

SKOV ESTATE LIMITED.....1ST PLAINTIFF

MUIGAI MACHARI.....2ND PLAINTIFF

SIMON NYARARI.....3RD PLAINTIFF

BEATRICE GICHUHI.....4TH PLAINTIFF

MWANGI MWANIKI.....5TH PLAINTIFF

ERASTUS GITHUKU.....6TH PLAINTIFF

VERSUS

AGRICULTURAL DEVELOPMENT CORPORATION...1ST DEFENDANT

LANDS LIMITED.....2ND DEFENDANT

RULING

(Application to be enjoined as interested party; principles to be applied; when person may be enjoined as interested party; plaintiff's case being that it purchased land from the defendant and seeking to be registered as owners; defendant refuting the purchase; interested parties claiming that they purchased portions of the land from the plaintiff; whether purely on the basis of the alleged purchase they are entitled to be enjoined as interested parties; claim by applicants being separate and being contingent upon the claim of the plaintiff; application dismissed)

1. The application before me is that dated 1 October 2014. The application is brought inter alia under the provisions of Order 1 Rule 10 and 14 of the Civil Procedure Rules and as drawn seeks the following orders :-

(a) *That this honourable court be pleased to order/direct that the applicants/intended interested parties herein be enjoined as interested parties in this suit/proceedings and consequently file their respective pleadings.*

(b) *That given the number of persons having an interest in the suit land herein, this honourable court be pleased to allow the applicants/interested parties herein to run an advertisement in the*

print media, radio broadcast and or otherwise inviting any person(s) who is/are interested in the suit land herein to join this suit for purposes of expediting the hearing and disposal thereof.

(c) That until further orders of this honourable court, the status quo obtaining in the suit land herein be maintained and the status quo is that no party/person should alienate, sell, dispose and or in any manner whatsoever interfere with the quiet possession of any person within the suit land herein.

(d) That costs of the application be in the cause.

2. The application is based on the grounds that :-

(a) The intended interested parties are lawful purchasers of assorted portions of the suit land herein from the shareholders, directors and or the plaintiff herein and have fully developed their respective portions of land and they reside therein.

(b) Any decision and or determination on any aspect in respect/relation to the ownership of the suit land herein is going to have an effect on them and more so on their rights and or entitlement to their lawful parcels of land and consequently their livelihoods.

(c) Given the prayers, claims, subject matter, bone and marrow of this suit, it is imperative, in the interests of justice and in all fairness that the intended interested parties be enjoined in this suit and be accorded a hearing.

3. The application is supported by the affidavit of one William Kinyanjui. He has deposed that he is among many other people who bought portions of the suit land from the shareholders of the 1st plaintiff company, and that he has developed the same. He has deposed that the suit land is home to about 3600 people, has schools, churches and several other developments. He has averred that he and all other persons residing in the property have legitimate and legally recognized rights in the suit land.

4. The application is opposed by the plaintiff and defendants. Before I go to the gist of the objection, I think it is important that I give a little perspective of this suit.

5. This suit was commenced by way of plaint filed on 18 March 2010. The plaintiff is a limited liability company, whereas the 1st defendant is a State Corporation. The 2nd defendant is a limited liability company wholly owned by the 1st defendant. The plaintiff and its members were lessees of the defendants' in the land parcel L.R No. 9467. In the year 1982 or thereabouts, the plaintiff applied to purchase the land and the same was offered to them at the price of Kshs.1,596,000/= which offer was accepted. It is pleaded in the plaint, that the plaintiff made a 20% deposit of the purchase price and that the balance was to be paid over 15 years, in 30 half yearly installments. It is pleaded that the first installment was to fall due after the defendants obtained the consent of the Land Control Board. The installment was paid, but the defendants failed to obtain the required consent. On 5 November 1994, the defendants threatened to sell the suit land by auction, unless they received the balance of the purchase price, of Kshs. 1, 057,848/= within 30 days. It is pleaded that the plaintiff paid the balance on 11 July 1995, but to date, the defendants have refused to transfer the suit land to the plaintiff. It is the position of the plaintiff that they paid the money within the time frame initially agreed.

6. In the suit, the plaintiff wants the defendants compelled to transfer the land to them.

7. The plaint was later amended on 29 April 2011, to include 11 other persons as plaintiffs. These are presumably the shareholders of the 1st plaintiff company. They have made an alternative claim in the suit for adverse possession.

8. In their defence, the defendants have denied offering the suit land for sale to the plaintiffs and that if there was any sale, the same was rescinded owing to non-performance by the plaintiffs. It is also pleaded that the claim for adverse possession cannot lie since the land is Government land under a State

Corporation. They have asked that the suit be dismissed.

9. There have been various applications in this matter one of which was an application for injunction filed by the plaintiffs. That application for injunction was dismissed by Lady Justice Wendoh, on 9 November 2011.

10. The plaintiffs have filed a Replying Affidavit sworn by Erastus Githuku Njuguna who is one of the directors of the 1st plaintiff company. He has deposed that the applicants need to demonstrate that they have a sufficient nexus with the subject matter of the suit before they can be enjoined. It is his view that the interest of the applicants is contingent and they should wait until the dispute between the plaintiffs and defendants is concluded. It is also stated that the claim of the intended interested parties, being based on a purchase from the plaintiffs, is a separate claim.

11. The defendants filed Grounds of Opposition to oppose the subject application. Inter alia, it is stated that the applicants have no locus standi; that they do not have any ascertainable or sufficient interest in the suit land; and that their application if allowed will delay the expeditious conclusion of the case.

12. Mr. Ndungu Njuguna for the applicants, submitted that the applicants are in possession of the suit land and that they purchased their portions from the plaintiffs. He submitted that any order made in this suit will have a substantial effect on them. He submitted that if the plaintiffs' case fails the applicants and others who are on the suit land stand to be evicted. He submitted that the court has an inherent duty not only to do justice, but also to show that justice has been done. He submitted that all parties who stand to be affected need to be heard. He stated that apart from the two applicants, there are thousands out there who will be affected by the judgment hence the prayer to advertise or broadcast to all other occupants. He relied on the case of **R v Kigera (E&L) KLR 1** and **Gatatha Farmers v Otieno Okiro, Kitale HCCC No. 57 of 2011 (2013) eKLR**.

13. Mr. Ombui for the defendants submitted that the sale agreements relied upon by the applicants are nullities as they were entered into with persons who have no property to sell. He was of the opinion that the interested parties have no claim at all. On the prayer for status quo, his view was that the matter was settled in the ruling on the application for injunction. He relied on the case of **Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others, Supreme Court, Petition No. 12 of 2013, Ruling of 27 February 2014 (2014) eKLR**, and submitted that it was held that an intended interested party must have a strong interest. He was further of the view that bringing in so many people into the suit will complicate the matter.

14. Mr. Githui for the plaintiffs submitted that there will be a misjoinder if the applicants are allowed into the suit. He submitted that it is only after this suit is determined that the rights of the interested parties will crystallize.

15. I have considered the application. The applicants in this application are two persons who allege to have purchased portions of the suit land from the plaintiffs, or directors or shareholders, of the 1st plaintiff company. They state that they, and many others, are in occupation of the suit land and therefore they have an interest in the outcome of this suit. They also want to be heard. That is why they have filed this application. It will be noticed that one of the prayers sought is to have all persons who are in occupation, invited to this suit as interested parties.

16. There is no explicit provision in the Civil Procedure Rules which covers applications by interested parties to be enjoined to suits. However, courts have in their discretion allowed parties, who have a sufficient interest in the subject matter to be enjoined to suits as interested parties. They have in most instances utilized the provisions of Order 1 Rule 10 which is drawn as follows :-

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.

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 (2 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.

17. It will be seen that Order 1 Rule 10 (2) gives leeway to the court to enjoin to the suit, a person *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.*

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.

19. In the application before me, the two applicants state that they should be enjoined to the suit because they purchased the suit property from the plaintiffs. They also state that several others need to be enjoined because they are in possession of the suit land. In my view, the question that is the pith and core before this court, is whether or not the defendants sold the suit land to the plaintiffs, and whether or not, the alleged sale ought to be upheld. Enjoining the applicants, or those in possession, will not in any way assist in the settlement of that question. Neither, in my opinion, do the applicants or the occupants of the suit land have a claim that must be tried alongside the claim between the plaintiff and defendant. Their claim can be tried separately, and in my view, after a determination of whether or not the plaintiffs are entitled to the suit land.

20. I have seen the two authorities cited by Mr. Njuguna for the applicants both of which are at most of persuasive authority. The first, **R v Kigera** was a case involving closure of premises for violation of the Public Health Act. In the matter, the trial court heard the landlord and the public health officer but did not

hear the tenants. On revision, the High Court was of the view that in the circumstances of the case, it was important to hear the tenants. In the other case of *Gatatha Farmers Co Ltd vs Otieno Okiro & 2 Others*, the applicants were persons who contended that they purchased the land in issue from the plaintiff company. The court in its discretion allowed them to come in as interested parties. The ruling therein does not give a background of the questions that were to be tried in that suit, and I am unable to find the context which convinced the learned judge to allow the application.

21. My own evaluation of this matter is that the presence of the intended interested party will not assist the court in the determination of the questions herein. Neither am I of the view that their claim, if any, is so closely tied to the matters herein that such claim must be tried alongside the one at hand. Even if I am wrong on this, I think it will be most inconvenient, to have in this suit, the thousands or so of the persons mentioned by the applicants, when all that needs to be tried is whether or not the plaintiffs had an enforceable sale agreement with the defendants. That has potential to delay the conclusion of the claim between the plaintiff and defendant. The context and surrounding circumstances of this case militate against joining the applicants and other occupants as interested parties in this case.

22. Mr. Njuguna argued that justice must not only be done but be seen to be done and therefore it is necessary to hear all parties to be affected by the judgment. I agree with the general hypothesis that justice need not only be done but be seen to be done. But I do not agree that in order for justice to be seen to be done, then all and sundry need to be heard. The court does not need to hold a public *baraza* so that justice is seen to have been done. Only those who must be heard for the issues to be determined need to be heard. I do not think that the applicants fall in that category.

23. There is the other prayer for status quo to be maintained. I could probably have broached this prayer if I had allowed the application for joinder. But I have held that the applicants and other occupants are not necessary parties, and it is not therefore necessary for me to consider this prayer, which in my view, was contingent upon them being enjoined to this suit.

24. The upshot of the foregoing is that I find no merit in this application. It is hereby dismissed, but I make no orders as to costs.

25. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 19th day of February 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT AT NAKURU

In the presence of: -

Mr Biko holding brief for Mr. Githui for plaintiffs.

Mr E M Juma for defendants

N/A for M/S Ndungu Njuguna for intended interested parties/applicants.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT AT NAKURU