



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

**AT KENYA**

**ELC CASE NO 99 OF 2014**

**ANTHONY NGETICH SUEREY.....PLAINTIFF**

**VERSUS**

**JOHN WACIRA CHIRI.....1<sup>ST</sup> DEFENDANT**

**PAUL CHESIRE ARAP CHEBIL.....2<sup>ND</sup> DEFENDANT**

**KALENJIN ENTERPRISES LIMITED.....3<sup>RD</sup> DEFENDANT**

**AND**

**JAMES KIBARU MUNGAI.....1<sup>ST</sup> APPLICANT**

**REUBEN NJENGA MUNGAI.....2<sup>ND</sup> APPLICANT**

**RULING**

***(Application to be enjoined as Interested Party and to be allowed to file a Statement of Claim; suit land revolving around ownership of certain properties claimed by the plaintiff and defendant; intended interested parties also laying claim to ownership of the same land; so that all issues may be determined in one suit, application allowed)***

This suit was commenced by way of a plaint filed on 16 April 2014. The plaintiff's case as pleaded is that he is the legal owner of the land parcels Nakuru Municipality/ Block 29/242, 243 and 244 (Ronda). It is claimed that the 1st and 2nd defendants, by way of fraud, colluded with the 3rd defendant to get title to the said parcels of land. It is his case that the three parcels of land were allotted to his late father, Chebande Alima, through the 3rd defendant and that he inherited the said parcels of land. He holds a confirmed grant of letters of administration, which he contends, shows that the three properties have been devolved to him. The claim of the plaintiff is for a declaration that he is the rightful owner of the three parcels of land. He has also asked for an order of eviction against the 1st and 2nd defendants.

The 1st defendant filed defence and counterclaim. His case is that he is the registered proprietor of the three parcels of land having purchased them from the plaintiff sometimes in the year 2013. He has displayed the title deeds which are in his name. In the counterclaim, he has asked for a declaration that the three suit lands belong to him, and for an order directed against the plaintiff to give vacant possession.

The 3rd defendant has entered appearance but so far has not filed any defence. The 2nd defendant on the

other hand has not yet entered appearance.

Through an application dated 13 October 2014, two persons, namely, James Kibaru Mungai and Reuben Njenga Mungai, have sought orders that they be enjoined to this suit as interested parties, and they be allowed to file a Statement of Claim. The two are sons of Peter Mungai Muthami (deceased). It is their case that their father was registered as proprietor of the plot numbers 243 and 244 and titles were issued to him on 30 May 2003. Peter Mungai Muthami died on 5 June 2009, and his wife took out letters of administration. The grant was confirmed on 18 January 2011. The two plots were assigned to the two applicants and they became registered as proprietors, by way of transmission, on 14 June 2012 and 12 July 2012 respectively, and title deeds were issued to them. About the year 2013, they asked the 1st defendant to help them identify the plots on the ground which he did. In the process, the 1st defendant offered to buy the two plots from the applicants, but they were not interested in selling the same. Later, they learnt that somehow, the 1st defendant has registered himself as proprietor of the two parcels of land. This they claim was done fraudulently as they have never sold the two plots to the 1st defendant.

Mr. Mutonyi for the applicants, urged me to allow the application, so that the two applicants may have opportunity to present their claim for determination. There was no objection from counsels representing the plaintiff and the 1st defendant. However, the 3rd defendant, through its director, Christopher Koech, objected to the application. The reason given is that according to them, the properties belong to one Chesire Chebii.

I have considered the application. Although the 3rd defendant has objected to the application, I think there is no basis for the same. In fact, in one of their replying affidavits, filed in response to the plaintiff's application for injunction, they have averred that the plot No. 242 was allotted to one Paul Chesire arap Chebii; that Plot No. 243 was allotted to one Koros Kiprotich, who in turn sold his shares to one Peter Mungai Muthami; and Plot No. 244 was allotted to one Kipitok arap Sitienei, who in turn sold his share to Peter Mungai Muthami. They seem to acknowledge that Paul Mungai Muthami had an interest in two of the properties in issue. It is the same two plots that the intended Interested Parties, want to be allowed to file a claim on.

So that all issues may be determined in one suit, it is in the interests of justice that I allow this application. I allow it. I order that James Kibaru Mungai and Reuben Njenga Mungai be enjoined to these proceedings as Interested Parties. I also permit them to file their Statement of Claim and put forth the prayers that they would wish this court to grant in their favour. This to be done within 14 days. Any party wishing to defend the claim of the Interested Parties, ought to file a Defence to it, within 14 days of service of the Statement of Claim.

Costs of this application shall be costs in the cause.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 10th day of February 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT AT NAKURU**

**In presence of:**

Mr Geoffrey Otieno holding brief for Mr Mongeri for plaintiff.

N/A for M/S Oumo & Co for 1<sup>st</sup> defendant

2<sup>nd</sup> defendant has not entered appearance: Absent

3<sup>rd</sup> defendant acting in person: absent

N/A for M/S Mutonyi Mbiyu & Co for Interested parties/applicants

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**