



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENT AND LAND COURT**  
ELC. CASE NO. 110 OF 2013

FRANCIS KIRATU .....1<sup>ST</sup> APPLICANT  
GEOFFREY GACHERU WANJIKU.....2<sup>ND</sup> APPLICANT  
  
**VERSUS**  
  
**THIKA GARISSA ROAD**  
  
DEVELOPERS LIMITED.....1<sup>ST</sup> RESPONDENT  
THE COMMISSIONER OF LANDS.....2<sup>ND</sup> RESPONDENT  
STEPHEN NGUGI.....3<sup>RD</sup> RESPONDENT

**RULING**

The application before the court for determination is the Notice of Motion dated 27<sup>th</sup> November 2014 brought under **Order 51 Rule 1 of the Civil Procedure Rules, Section 3 and 3A** of the **Civil Procedure Act** seeking for orders that the proposed interested party herein, Stephen Ngugi, be granted leave to join in this suit, tender evidence and participate in the proceedings herein.

This application is premised on the grounds stated on the face of the application and the supporting affidavit of the proposed interested party who stated that he was the purchaser of one plot in the suit property from the 1<sup>st</sup> Respondent in 1991, that this suit commenced in **Thika vide Civil Suit No 1292 of 2005** where he appeared before the court several times then the suit was transferred to Nairobi initially at the Judicial Review Division then to the Environment and Land Court and that the proceedings on this suit have a substantial bearing to the parcel in contention and the interested party supports the petition therefore it is in the interest of justice that he be granted an opportunity to participate in these proceedings.

This application is opposed. The Plaintiff, Geoffrey Gacheru Wanjiku, filed a Replying Affidavit stating that the Applicant had not shown or exhibited any proof that he has any interest in the suit and that in as much as the court has the powers to enjoin any party to a suit, such party must table evidence that he has an interest in such a suit. He further averred that the Applicant’s application is intended to delay the prosecution of this suit as he has not informed the court how he will assist the court in arriving at a just decision and as such this application should be dismissed with costs.

The 1<sup>st</sup> Defendant filed its grounds of opposition on 20<sup>th</sup> January 2015 where it stated that the Applicant is a stranger to the suit and has not demonstrated any right and/or interest in the subject land, that the enjoinder of the Applicant will embarrass the court since he is a vexatious litigant and that the Applicant had not attached any interest and/or right to the subject property.

In a rejoinder the Applicant filed a replying affidavit where he stated that he was eager that this suit be concluded so that he can benefit from his investment. He added that the Plaintiffs and the 1<sup>st</sup> Defendant are in occupation of the suit property and have the money he used to purchase the property therefore he was at a disadvantage for not occupying the suit property he purchased and he doesn't have the money.

Parties filed their written submissions in canvassing this application. The Applicant reiterated the contents of his affidavit as did the 1<sup>st</sup> Defendant. The Plaintiffs submitted that there was inordinate delay in making the application to be enjoined to the suit.

I have considered the affidavits and the submissions filed by the parties to this application. The issue for determination by this court is whether the intended interested party should be enjoined in this suit. This suit was initially instituted by the 1<sup>st</sup> Defendant in **Thika Civil Suit No 129 of 2005** where it sued the Plaintiffs for trespass on land parcel LR No. 4953/1855 (hereinafter referred to as the "suit property"). The matter was later transferred to the High Court at the Judicial Review Division before being transferred to this court. The Plaintiffs filed an Originating Summons on 1<sup>st</sup> April 2010 where they claimed to have been allocated the suit property by Del Monte (K) Limited in 1964 since they were former employees of the said company. They claim adverse possession and seek to be registered as proprietors of the suit property. On the other hand, the 1<sup>st</sup> Defendant claims to have been issued grant of the suit property in 1993 when it took possession and the squatters were given an alternative land to settle in. The 1<sup>st</sup> Defendant also stated that since it was issued with the grant it undertook subdivisions of the parcels of land for issuance of title deeds to its members and that it indeed subdivided and allocated plots to its members. The intended interested party has shown that he was a member of the 1<sup>st</sup> Defendant and had been allocated plot No 25 in the suit property and was issued with a plot certificate after paying Kshs. 500/-. There is also evidence that he paid Kshs. 10,000/- for an allotment letter and obtained subdivision scheme approval from the Ministry of Lands and Settlement.

The instructive provision of the law on this point is **Order 1 rule 10(2)** of the **Civil Procedure Rules, 2010** which provides as follows:

**“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.”**

Going by the provision of the law cited above, the key criteria the court uses in deciding whether to enjoin a person into a suit is whether their presence is necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To my mind, the intended interested party's claim is against the 1<sup>st</sup> Defendant and is substantially different from the Plaintiffs' claim. The issue for determination in this suit is who as between the Plaintiffs and the 1<sup>st</sup> Defendant is the owner of the suit property. The intended interested party's claim can only be determined after the interest of the 1<sup>st</sup> Defendant from whom he purportedly bought the plot is heard and determined. Accordingly, the Applicant's claim cannot be adjudicated in the same suit as that of the Plaintiffs. It is my view that the intended interested party be at liberty to file an independent suit against the 1<sup>st</sup> Defendant since his claim is against the 1<sup>st</sup> Defendant. The application therefore lacks merit and is hereby dismissed with costs.

**DELIVERED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup>**

**DAY OF MAY 2015.**

**MARY M. GITUMBI**

**JUDGE**