



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 82 OF 2013

DANIEL NGANGA KAMANDE.....1ST PLAINTIFF/RESPONDENT

CHARLES KAMAU WANGUHU.....2ND PLAINTIFF/RESPONDENT

JANE WANGARI KIBE.....3RD PLAINTIFF/RESPONDENT

VERSUS

NGUCANIRIO FARMERS CO. LTD.....DEFENDANT/JUDGMENT DEBTOR

JOSEPH WACHIRA WANENE & OTHERS.....INTERESTED PARTIES

JOSEPH MAINA KINGORI WANGECHI...INTERESTED PARTY/APPLICANT

Ruling

1. Joseph Maina Kingori Wangechi (hereinafter called “the applicant” brought the Chamber Summons dated **6th November, 2012** praying that he be enjoined as an interested party in this suit.
2. The application is premised on the grounds that the applicant is at risk of being condemned unheard; that the evidence the applicant will adduce will assist in determination of the suit and that the parties to the suit will not suffer any loss or prejudice if the application is allowed.
3. In the affidavit filed in support of the application, the applicant has deposed that he bought a portion of the suit property from Charles Maina Kiboko (deceased); that the deceased had bought the portion he sold to him from the defendant in the suit herein and that he resides in the portion he bought. It is the applicant’s case that from the time he bought a portion of the suit property, he has enjoyed quiet possession. The applicant contends that he was not aware of the case concerning the suit property and explains that he got to know about the suit herein from the eighth interested party. It is the applicant’s case, that as an holder of a portion of the suit property, he stands to suffer irreparable damage if he is not allowed to participate in the suit as an interested party.
4. It is pointed that there was no inordinate delay in filing the application and reiterated that no prejudice will be occasioned on any of the parties if the applicant is allowed to join the suit.
5. Maintaining that he is an innocent purchaser for value without notice, the applicant has reiterated that he had no knowledge of the dispute concerning the suit property.
6. In a further affidavit filed by the applicant, the applicant has reiterated that he had no reason to doubt

the deceased's entitlement to the suit property because he had all the title documents from the defendant company; that the alleged lack of consent to transfer the suit property was not drawn to his attention. It is pointed out that the order of eviction obtained by the plaintiffs was successfully challenged in court and an order for fresh hearing given. In view of the foregoing, it is reiterated that it is fair and just that the applicant be allowed to explain how he obtained interest in the suit property and that it will only be fair and just to allow the application.

7. In reply and opposition to the application, the 1st plaintiff/respondent (Daniel Nganga Kamande) filed the replying affidavit on **21st February, 2013** and further replying affidavit on **27th June, 2013** in which he deposes that the deceased person herein was not a proprietor of any parcel of land within the suit property; that if the deceased person was allocated a portion of the suit property by the defendant/judgment debtor, then the allocation was fraudulent as the consent to sub-divide the suit property was revoked on 15th July, 1995.

8. It is contended that any subsequent dealings with the suit property was illegal. It is further contended that the allegation by the applicant that he was unaware of the suit cannot be true because the suit has been pending for a long period of time. Explaining that the applicant is one of the many persons who had been allocated land by the defendant/judgment debtor, the 1st plaintiff/respondent contends that allowing the application may precipitate a litany of similar applications.

9. In a detailed replying affidavit, the 1st plaintiff has given an history of the suit and the circumstances that led to setting aside of the judgment entered in favour of the plaintiffs and reiterated that the applicant has no justiciable rights in the suit property. The court is urged, if inclined to allow the application, to order that an order be published in the local dailies or any other such media calling on any party who has a claim over the land to be enjoined in the suit in order for the matter to be dealt with finality.

Submissions:-

10. In the submissions filed on behalf of the applicant, it is explained that the applicant bought two parcels to be excised from the suit property being plots No. 429 and 430 and immediately took possession. It is reiterated that the applicant was not aware of the dispute over the suit property; that the seller of the portions bought by the applicant had all the requisite documents from the defendant and that the applicant had no reason to doubt the transaction.

11. It is further submitted, that the contentions contained in the 1st plaintiff's replying affidavit are unmaintainable because:-

- a) The defendant was incapable of owning property in its own name (not a registered company);
- b) the applicant was an automatic interested party in the suit having obtained interest therein from a person who similarly was an interested party.
- c) That the further replying affidavit deals with matters determined in the ruling setting aside the judgment entered in favour of the plaintiffs.
- d) that the plaintiffs have not commented on the ruling setting aside the orders obtained against the defendant and the people in occupation of the suit property; and
- e) that the 1st plaintiff has not demonstrated that he had authority to file a replying affidavit on behalf of other plaintiffs.

Submissions on behalf of plaintiff:-

12. In the submissions filed on behalf of the respondents, it is admitted that this court has jurisdiction to grant the orders sought, under **Order 1 Rule 10(2)** of the Civil Procedure Rules. Referring to the case of **Law Society -vs- A.G**, Petition No. 185 of 2005, it is submitted that in the circumstances of this case

joinder would be an impediment to the proceedings.

13. Further, that the suit is between the plaintiffs and the defendants and that the documents required to determine the suit are within control of the plaintiff and the defendant but not the applicant. It is also contended that the applicant has not produced any valid documents of ownership of the suit property (the documents produced by the applicant are said to be vague). In that regard, it is submitted that the applicant has not demonstrated that he would be affected by the orders to be issued in the suit because the suit property is not mentioned in his documents. (The property mentioned in the applicant's documents is said not to be part of the suit property/not within the suit property).

Analysis and determination:

14. The law on joinder is found in **Order 1 Rule 1** of the Civil Procedure Rules which provides as follows:-

“All persons may be enjoined as plaintiffs in whom any right to relief in respect or arising out of the same act or transactions is alleged to exist whether jointly, severally or in alternative where, if such persons brought separate suits any common question of law or fact would arise.”

15. **Order 1 Rule 14** of the Civil Procedure Rules provides for the procedure of enjoining parties to a suit or removing them from the suit. The rule provides as follows:-

“An application to add or strike out or substitute a plaintiff may be made to the court at anytime before trial by chamber summons or at the trial of the suit in a summary manner.”

16. From the foregoing, it is clear that the law contemplates that the application may be made by any person desiring to add a party to the suit or strike a party therefrom. The factors which the court considers in an application for joinder are those set out in **Order 1 Rule 1** of the Civil Procedure Rules, that is- existence of any right to relief in respect or arising out of the same act or series of acts or transactions alleged to exist whether jointly, severally or in alternative where, if such persons brought separate suits any common question of law or fact would arise.

17. In this application, it is not in dispute that the applicant has an interest in the suit property by virtue of being a person in possession of the suit property. whether or not the applicant lawfully obtained interest in the suit property is, in my view, a question which can only be determined during trial.

18. Concerning the plaintiffs' contention that the applicant should not be granted an opportunity to join the suit for lack of sufficient interest in the suit property, I adopt **Odunga J's**, observation while setting aside the judgment entered in favour of the plaintiffs where he stated:-

“A party should not be denied an opportunity of being heard simply because the court believes that he does not have a credible case to put forward. The uselessness of a party's case is no justification to deny a party the right to natural justice.”

19. Since there is evidence that the respondent is in occupation of the suit property, I find and hold that the applicant deserves an opportunity to defend his interest in the suit property.

20. Whereas the plaintiff's concern regarding the possibility of the application opening a pandora's box of similar applications is germane and genuine, it cannot, nevertheless, be a basis of denying the applicant an opportunity to defend his rights to the suit property.

21. With regard to the respondents suggestion that an order be published in a daily newspaper inviting all other interested parties to apply to join the suit in order to avoid delay in hearing and determination of the suit through similar applications, I find the suggestion reasonable and order that the plaintiffs publish a notice in a local newspaper of national circulation not later than 60 days from the date hereof, inviting

any person who may have a claim over the suit property to be enjoined in the suit.

22. The upshot of the foregoing is that the application has merit and is allowed as prayed.

23. Costs of the application shall be in cause.

Dated and signed at Nyeri this 2nd day of June, 2015.

L N WAITHAKA

JUDGE

Dated and delivered in open court at Nakuru this 19th June day of 2015.

A. MSHILA

JUDGE