



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO 241 OF 2014**

**FLORA OLA LIMITED.....PLAITNIFF**

**VERSUS**

**KENNETH KIPCHOMUSO.....1<sup>ST</sup> DEFENDANT**

**THOMAS KOMEN RUTO .....2<sup>ND</sup> DEFENDANT**

**MUSA CHEMASE .....3<sup>RD</sup> DEFENDANT**

**AND**

**JOHN K LOKORIO .....INTERESTED PARTY**

**RULING**

**(Application to be enjoined as interested party; application dismissed).**

1. The application before me is that dated 27<sup>th</sup> January 2015 filed by one John K Lokorio who wishes to be enjoined to this suit as an interested party. The application is said to be brought vide the provisions of Order 40 Rule 7 and 10; and Order 1 Rule 10, of the Civil Procedure Rules; and sections 1A, 1B and 3A of the Civil Procedure Act.

2. Apart from the prayer for joinder, the applicant also wants orders to set aside, discharge, or vary the orders of court made on 22<sup>nd</sup> January 2015, and order that status quo ante be maintained pending the hearing and determination of this suit.

3. The application is supported by the affidavit of the applicant and is opposed by the plaintiff, who filed a replying affidavit.

4. Before I delve into the gist of the application, I think it is important that I set out the background leading to this application.

5. This suit was commenced by way of plaint filed on 22<sup>nd</sup> August 2014. The persons sued are three, Kenneth Kipchomuso, Thomas Komen Ruto, and Musa Chemase. The case of the plaintiff is that she is the proprietor of the land parcel Solai/Ndungiri Block 10/241 (Olbonata) which is land measuring about 16.188 Hectares. The case of the plaintiff is that the three defendants trespassed into her land on or

about the 25<sup>th</sup> and 26<sup>th</sup> March 2014, and destroyed the fence and grazed their livestock. In the suit, the plaintiff has asked for orders of permanent injunction against the three defendants.

6. On 30<sup>th</sup> September 2014, the plaintiff filed an application for injunction to restrain the defendants from any further interference with the suit property pending hearing and determination of the case.

7. The defendants filed a response to the application by way of Grounds of opposition and a Replying Affidavit.

8. I heard the application for injunction and allowed it through my ruling of 22nd January 2015.

9. It is after that ruling that this application was filed on 28<sup>th</sup> January 2015. In the supporting affidavit, Mr Lokorio has deposed that he is actually the person in possession of the suit property. He has deposed that there have been two other suits touching on the subject matter herein, being the cases Nakuru ELC No.304 of 2012 and Nakuru ELC No. 634 of 2013. The former was a case filed by Raymark Ltd and the later by Flora Ola Ltd ( the plaintiff herein ). In both cases, John Lokorio was defendant. He has averred that the two cases were withdrawn but that prior to the withdrawal of the suit Nakuru ELC No.304 of 2012, there were orders in his favour. The subject matter in that suit was a land parcel Solai/Ndungiri Block 10/217 ( Olbonata) measuring 336 hectares. He has averred that to his knowledge, this land has never been sub-divided, disposed of, or alienated to the plaintiff herein. He has averred that there were court orders stopping any dealings over that property. He has stated that the plaintiff's title deed was issued on 16th September 2013 when the stay orders were still in place. It is his view that the plaintiff herein withdrew the suit ELC No.634/2013 when they found him " too hot to handle" and are going for his agents through this suit. He has averred that if he is allowed to participate in these proceedings, all issues will be adjudicated with finality. It is his position that the proceedings herein will affect his interests.

10. In its reply filed through one Kipngetich arap Korir Bett, the plaintiff has averred inter alia that the proposed interested party has not stated what claim or cause of action he has against the plaintiff which he intends to pursue in this suit. It is deposed that if he intends to pursue a claim, he can only do so as plaintiff or defendant, and not interested party. It is also pointed out that the other two suits have been withdrawn.

11. I have considered the matter and taken note of the submissions of Mr Karanja Mbugua for the applicant who is the only counsel who appeared at the hearing of the application.

12. I can see for myself that Mr Lokorio wants to come into these proceedings as interested party, and not defendant. In addition, he wants the setting aside of the orders of injunction. There is no express provisions in the Civil Procedure Rules for the joinder of persons as interested parties, but courts usually use the flexibility of the provisions of order 1 Rule 10 (2) which allows the joinder of a person, if the presence of such person is deemed necessary for the proper determination of the matter before court.

13. This suit is a suit of trespass against 3 persons. I cannot tell why the plaintiff chose to sue these three persons and not John Lokorio. True, she had sued John Lokorio in the suit ELC No. 634/2013 but I do not know why the plaintiff thought fit to withdraw that suit.

14. They must have had their own reasons and it is not for me to second guess why.

15. Going through his application, John Lokorio seems to suggest that he has an interest in the land in issue. But his interest does not come out clearly. In his affidavit he has averred that Raymark Ltd assigned the land parcel/Solai Ndungiri Block 10/217 ( Olbonata) to him. However, the connection between that land and this land is not clear to me. Mr. Lokorio appears to allude to a sub-division but it has not been shown to me that the suit property ( parcel No. 241) arose out of a sub-division of the parcel No.217. Assuming that John Lokorio claims the whole of the parcel No.217, and that the suit property is a sub-division of the parcel No.217, I ask myself why Mr. Lokorio does

not deem fit to file a suit of his own to claim whatever he believes rightfully belongs to him. He himself has not stated what he wants to do in this suit. If it is to pursue his claim over the land parcel No.217 or any sub-division thereof, then what he needs to do is to file suit, not to come to these proceedings as interested party. The suit herein is a claim of trespass against the three named persons. I do not see the necessity of Mr Lokorio in these proceedings unless the parties themselves elect to bring him to the proceedings and make certain claims against him.

16. I therefore disallow the application for joinder as interested party. If I am wrong, there would still be no prejudice suffered by Mr. Lokorio who is free to file a case of his own.

17. Having dismissed the prayer for joinder as interested party, I do not see the need of canvassing the other prayers, for they are now prayers made by a person not a party to this case.

18. The upshot of the above is that I find no merit in the application dated 27<sup>th</sup> January 2015 and it is hereby dismissed with costs.

**Dated, signed and delivered in open court at Nakuru this 9th day of July 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of: -**

N/A for M/s Kale Maina & Bundotich Advocates for plaintiff/respondent.

N/A for M/s Karanja Mbugua & Co Advocates for proposed interested party/applicant.

Janet : CA

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**