



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. CASE NO. 1228 OF 2013

PETER AMBROSE NG'ANG'A.....PLAINTIFF

VERSUS

GLADYS NYAMUHU NDEGWA.....1ST DEFENDANT

NYAKINYUA INVESTMENTS LIMITED.....2ND DEFENDANT

GEOFREY KAMAU MBUGUA.....3RD DEFENDANT

RULING

The Application for the Court's consideration is the Chamber Summons dated 21st January 2015 brought under **Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Order 1 Rules 3, 10(2), 4 and 25 of the Civil Procedure Rules, Section 13(7) & (9) of the Environment & Land Court Act** seeking for orders that Geoffrey Kamau Mbugua be enjoined as a 3rd Defendant in this suit and as 3rd Respondent in the Notice of Motion filed. The Application is premised on the grounds stated on the face of it together with the Supporting affidavit of Peter Ambrose Ng'ang'a, the Plaintiff herein, who averred that he seeks to have Geoffrey Kamau Mbugua enjoined in this suit as he is a central player in his claim. He claimed that the suit property had been invaded and someone was putting up structures on it and when he sought to find out who the invader was he found that it was the said Geoffrey Kamau Mbugua. He further averred that the said Geoffrey Kamau Mbugua claimed that he had purchased the suit property from the 1st Defendant but declined to divulge any further information about the purchase. He stated further that he believes that the enjoining of the said Geoffrey Kamau Mbugua into this suit would be in furtherance of the interest of justice and that no party would be prejudiced by such orders.

The 1st Defendant indicated that she did not oppose the Application.

I have considered the Application and the issue for determination is whether to enjoin the said Geoffrey Kamau Mbugua into this suit as the 3rd Defendant. **Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010** provides for joinder of parties and sets the criteria for who can be joined. This order provides that,

“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”.

Order 1 Rule 3 of the **Civil Procedure Rules, 2010** provides as follows,

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common questions of law or fact would arise.”

This rule grants this court power to enjoin a party to a suit so that the issues in dispute may be properly and effectively adjudicated where the court is of the opinion that it would be necessary to enjoin a party to the suit for the effective determination of the matters in dispute.

In order to determine whether the Plaintiff has any right of relief against the said Geoffrey Kamau Mbugua, I have to ascertain the level of involvement of this person in this particular suit. In this suit, the Plaintiff claims that he entered into an agreement for sale with the 1st Defendant, Gladys Nyamuhu Ndegwa, for the sale of some 100 ordinary shares in Nyakinyua Investments Limited, a private land buying company, vide Share Certificate No. 4567 at an agreed price of Kshs. 100,000/- which the Plaintiff claims to have paid in full to the 1st Defendant. The Plaintiff claims that the 1st Defendant is seeking to dispossess him of the suit property through overt acts with the result that he is apprehensive that the suit land may be transferred to third parties to his detriment and loss. Further to this, the Plaintiff has claimed that the said Geoffrey Kamau Mbugua has invaded the suit property and was constructing thereon claiming that he had purchased it from the 1st Defendant. It is therefore my opinion that with both the Plaintiff and the said Geoffrey Kamau Mbugua claiming ownership of the suit property having supposedly both purchased it from the 1st defendant, there is no doubt that the said Geoffrey Kamau Mbugua should be enjoined in this suit as the 3rd Defendant.

To that extent therefore, I am convinced that this Application is merited and proceed to allow the same. Costs shall be in the cause.

DELIVERED AND SIGNED AT NAIROBI THIS 9TH DAY OF OCTOBER 2015.

MARY M. GITUMBI

JUDGE