



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: WARSAME, MUSINGA, SICHALE J.J.A)

CIVIL APPLICATION NO. 132 OF 2020

BETWEEN

DR. PATRICK TUMBO NYAMEMBA.....INTERESTED PARTY/APPLICANT

AND

MARITUAI KARINGITHE (Suing as the Legal representative of the estate of KarKise

Ole Mosiro).....1ST APPLICANT/1ST RESPONDENT

BOMAN MOSIRO.....2ND APPLICANT/2ND RESPONDENT

ELIJAH MOSIRO.....3RD APPLICANT/3RD RESPONDENT

SIMON NDUNGU SUPEYO.....1ST RESPONDENT/4TH RESPONDENT

JOSEPH CRESPIERS SUPEYO.....2ND RESPONDENT/5TH RESPONDENT

(Being an Application for joinder of Dr. Patrick Tumbo Nyamemba as an Interested Party in Civil Application No. 132 of 2020)

RULING OF THE COURT

1. By a Notice of Motion dated 10th July 2020, the applicant, **Dr. Patrick Tumbo Nyamemba** seeks to be enjoined to the proceedings as an Interested Party.
2. Briefly, the facts giving rise to this application are that sometime in October, 2010 the applicant legitimately purchased **Land Reference Ngong/Ngong/52496** and **Land Reference Ngong/Ngong/52503 (the suit properties)** from the **1ST APPLICANT/1ST RESPONDENT** and the estate of the late Rangida Ole Mosiro for Kshs.16,000,000; that he was not aware the suit properties were involved in Court proceedings in ELC No. 372 of 2017 (formerly Environment and Land Cause No. 963 of 2006) and he only came to learn of the said proceedings and subsequent decision in the matter on or about December 2019 where the Court ordered the eviction of the occupants from the suit properties.
3. The application is supported by the affidavit of the applicant where it is deponed that: there is an application before this court seeking orders of stay of the Superior Court's Judgment; as the registered proprietor of the suit properties, the applicant has an indefeasible interest in the suit properties and in any proceedings affecting them; his rights will be adversely affected if the order sought is not granted; and that it is in the interest of justice that the application be allowed.
4. We have carefully considered the application, the affidavit in support, and the law. As was stated by the Supreme Court in ***Trusted Society of Human Rights Alliance v. Mumo Matemo & 5 Others, Sup. Ct. Pet. No. 12 of 2013***

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her

interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”

5. The applicant herein has annexed copies of title documents to the suit property issued on 14th December, 2011 as proof of ownership, cheques and bank transfers showing payment to the 1st Applicant/1st Respondent and the estate of the late Rangida Ole Mosiro who were the previous land owners, the two transfers dated 14th December 2011 and the Land Control Board consent. In our view, therefore, the applicant has demonstrated to our satisfaction that his interest as a legitimate purchaser or innocent purchaser for value would be affected or ultimately defeated, if he is not joined as an interested party. It is for the court to determine, whether his interest in the suit property was legitimate or otherwise but as for now, we think, it is important for the applicant to canvass his interest or cause of action.

6. In the circumstances we find that this is a proper application for joinder. The applicant has a stake in the application before this Court and will suffer substantial prejudice if the application is denied. Accordingly, we allow the Notice of Motion dated 10th July, 2020 and make no order as to costs.

Dated and Delivered at Nairobi this 2nd day of October, 2020.

M. WARSAME

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JUDGE OF APPEAL

D.K MUSINGA

.....

JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR