



**Sanga (Suing in His Capacity as the Personal Representative of Sanga Mwambo Kai)
v Tebid Holdings Limited & 2 others; Randu (Applicant) (Environmental and Land
Originating Summons 88 of 2019) [2024] KEELC 5577 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5577 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 88 OF 2019
FM NJOROGE, J
JULY 31, 2024**

BETWEEN

**ALPHONCE MWAMBO SANGA (SUING IN HIS CAPACITY AS THE
PERSONAL REPRESENTATIVE OF SANGA MWAMBO KAI) PLAINTIFF**

AND

TEBID HOLDINGS LIMITED 1ST DEFENDANT

DISTRICT LAND REGISTRAR, KILIFI 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

AND

BENJAMIN MUGINDO RANDU APPLICANT

RULING

1. Before this court for determination is the Applicant's/Proposed Interested Party's Notice of Motion dated 26th August 2022. In the Notice of Motion brought under Article 40, 50(1) of the Constitution of Kenya 2010, Section 3A of the Civil Procedure Act, Order 1 Rule 10(2) and Order 51 Rule 1 of the Civil Procedure Rules, 2010, the Applicant/Proposed Interested Party seeks the following orders:
 1. That the Honourable Court be pleased to grant leave to the Applicant/Proposed Interested Party to be joined in this suit and to file such pleadings as may be necessary to secure his interest;
 2. That pending the hearing of this application inter partes, this Honourable Court be pleased to issue a temporary order restraining the Plaintiff and the Defendants either by



themselves, their servants and or agents or such other person from selling, advertising for sale by auction, transferring, assigning, altering the records or in any other manner interfering with the suit property;

3. That pending the hearing of this application, the 1st Defendant's application and the main suit, this Honourable Court be pleased to issue a temporary injunction restraining the Plaintiff and the Defendants either by themselves, their servants and or agents or such other person from selling, advertising for sale by auction, transferring, assigning, altering the records or in any other manner interfering with the suit property;
4. That the costs of this application be provided for.
2. The application is supported by the Affidavit of Benjamin Mugindo Randu, the applicant. In that affidavit he states that by virtue of a duly executed agreement dated 12/2/2019 he has a recognizable interest in the suit property. He states that the said agreement expressly provided for subdivision of the suit land and transfer of a portion thereof to him. He has also learnt that the 1st defendant has lodged an application in which it seeks to set aside the judgment issued in the matter on 2/12/21, which judgment ordered that the suit land be registered in the plaintiff's name. (this court has however perused the record and noted that the said judgment was set aside vide a ruling dated 3/3/2023.) Upon the advice of his counsel on record, he states that he believes that he has a substantial claim against the 1st defendant which claim should equally be tried, and that he deserved a fair hearing and that his presence in the matter is necessary in order for the court to effectually and completely adjudicate upon the issues arising in the suit.
3. The plaintiff filed a replying affidavit on 18/1/2024 in which he stated that the application at hand is premised on untruths; that the applicant wrote to the National Land Commission (NLC) on 26/9/2016 and surrendered all his interest in the suit land, and that the NLC made the finding that his interest had passed to the plaintiff. He stated that the finding by the National Land Commission has not yet been set aside, and that the present application is a mere afterthought.
4. The 1st defendant responded to the application vide the grounds of opposition filed on 1/2/2024. In those grounds it is stated that the applicant's purported interest has not crystallized as it was pegged on the registration of the property in the name of the plaintiff which has not happened; that he has not demonstrated a sufficient stake or interest in the proceedings or that his presence is necessary or that it would help determine the issues in dispute, or that he is going to be adversely affected by any orders made regarding the suit land.
5. It is also noteworthy that the 1st defendant has already responded to the Originating Summons vide the sworn replying affidavit of Luca Fanini, its director. The deponent therein stated that the 1st defendant purchased the land from Mayungu Ltd for value in 2008 while the title had no encumbrance and the 1st defendant was duly registered and issued with a title deed; that the land was vacant and the 1st defendant took possession upon purchase, and it is still in possession to date; that it is untrue that Sanga Mwambo Kai, the plaintiff's father, was the beneficial or original owner of the suit property.
6. Only the applicant filed submissions on the application. He did so on 26/2/2024. He relied on the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* 2014 eKLR and urged that the application be granted.
7. I have considered the application the responses and the submissions. There appears to be no doubt among all the parties that the applicant was in some manner connected to the suit land at some point.



However, the present suit is lodged by the plaintiff who seeks to have the 1st defendant's title cancelled and that the plaintiff be registered as the proprietor over the suit land.

8. The main objection by the 1st defendant lies in the claim that the applicant's interest has not crystallized. It is to be remembered that the applicant filed the present application after judgment was delivered and the judgment had ordered that the land be registered in the name of the plaintiff. The final outcome of this case can not be foreseen but it will be premised on the evidence of the parties already existing in the suit. It is the plaintiff alone who can be expected to establish his claim to the land by way of evidence. It is quite doubtful that the applicant, though he has come into the matter by way of an agreement on which he pegs all his interest, can be expected to do the same. At the moment and in view of the fact that the judgment that had allowed registration of the suit land in the name of the plaintiff has been set aside this court finds no need to join the applicant as a party in this suit. The question would also arise as to what kind of party he would be if joined and how he may assist the court with the determination of the dispute between the existing parties.
9. In this court's view that this being the plaintiff's case against the defendants it is for the plaintiff to establish his case against them if orders are to issue in the final judgment granting him the land. The applicant may agree to provide crucial evidence for the determination of the present suit even when he has not been made a party thereto if he thinks that it is in his interest to do so. At present, the land has not been registered in the name of the plaintiff and he can not be said to have refused or neglected to transfer the applicant's alleged portion to him. It is upon the delivery of judgment that it can be known as to whether the land will be registered in the plaintiff's name or not, and at that time the applicant's right to have a portion of the land transferred to him will crystallize, and, subject to the conduct of the plaintiff perchance he attains the registration sought, the applicant may have a right to sue.
10. For the foregoing reasons I find that the application dated 26/8/2022 lacks merit and the same is dismissed. Costs shall be in the cause.
11. This suit shall be mentioned on 26th September 2024 to confirm compliance and for the issuance of a hearing date.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 31ST DAY OF JULY 2024.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

