



Terakate Properties v Develco Investments Limited (In Liquidation) & 2 others; Mucheru & 25 others (Interested Parties) (Environment & Land Case 3 of 2009) [2024] KEELC 5631 (KLR) (18 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5631 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 3 OF 2009**

**AA OMOLLO, J
JULY 18, 2024**

BETWEEN

TERAKATE PROPERTIES PLAINTIFF

AND

DEVELCO INVESTMENTS LIMITED (IN LIQUIDATION) 1ST DEFENDANT

KASARANI HILLS LIMITED 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

AND

AGNES WANGUI MUCHERU & 25 OTHERS INTERESTED PARTY

RULING

1. For determination is the application dated 23rd April, 2023 by the Applicants who described themselves as proposed 27th – 36th Interested Parties. The application is brought under the provisions of Section 1A, 1B and 3A of the *Civil Procedure Act* and Order 51 of the *Rules*. The orders sought are;
 1. That the Applicants herein be enjoined in the suit herein as the 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th and 36th Interested Parties.
 2. That the costs of this application be in the cause.
2. The application is premised on the grounds on its face and the affidavit sworn in its support by Julius Peter Migwi on the 23rd April, 2024. The Applicants deposed that they are purchasers of various plots from the plaintiffs as shown in the annexed receipts marked as JPMGI. That it recently came to their knowledge that the plaintiff entered into a consent comprising this suit.



3. That the orders granted in the consent recorded by the Parties herein bind them without affording them an opportunity to be heard and ventilate their concerns before this Honourable court as they were never parties to this suit.
4. The application was opposed by a Preliminary Objection and grounds of opposition filed by the Plaintiff. The Preliminary Objection stated inter alia thus;
 - i. The application is time barred as any claim by the Applicants under whatever shade or ground is more than 12 years old as the annexures clearly indicate.
 - ii. The application further offends the provisions of Order 25 Rule 2 of the Civil Procedure Rules 2010.
 - iii. The applicants have not placed before Court any evidence that the suit land is currently in existence and is still owned by the parties herein.
5. The 1st & 2nd Interested Parties also opposed the application vide the Replying Affidavit sworn by Agnes Wangui Mucheru on 4th December, 2023. She deposed that the Plaintiff's advocate had in 2012 wrote to all persons affected to join the suit but the Applicants dithered. That the consent judgment has been executed and the land transferred to 3rd parties as shown in annex. AWM1 showing 8 entries registered against the title pursuant to the consent.
6. She averred that Kingdom Seekers Fellowship which has bought part of the land has taken possession and erected a mega church as well as other buyers who have also taken possession. That the suit land has been subdivided and no longer exists.
7. The Applicants filed written submissions and cited several case laws to support it. They cited inter alia the case of Leonard Kimeu Mwanthi v Rukaria M'twerandu; Nathaniel Kithinji & 4 Others (2021) eKLR where Mbugua J. stated thus;

“A party claiming to be enjoined in proceedings must have an interest in the pending litigation.”
8. The Applicants added that the application for joinder as an interested party may be made even at the Appellate stage of the proceedings. That the only condition to be met is that the proceedings are still alive and that the proceedings should not be used to bring a fresh claim. In support, they cited the case of David Kiptugen v Commissioner of Lands & 4 Others (2016) eKLR.
9. I have considered the issues raised by the Applicants and the reasons why they want to join these proceedings at this stage one of which is because they purchased their plots from the plaintiff. Second, that the consent order is binding them without getting an opportunity to be heard.
10. Paragraph 1 of the consent order between the Plaintiff and the 6th to 26th Interested Parties was very specific as to which parties it referred to. It stated inter alia thus;
 - “ 1. The 6th – 26th Interested Parties do furnish the Plaintiff's advocates with copies of the sale agreements and payment receipts in respect of the purchase of parcels of land within LR No. 11329 (“the suit land”), Kasarani from the Plaintiff for verification.
 2. The Plaintiff do refund the verified purchase price or part thereof received by the Plaintiff together with a lump-sum 100% interest payment within a period of 12 months from the date of compliance with clause 1 above after which the



6th to 26th Interested parties will have no further or other claim against the suit land, the plaintiff or the 2nd defendant whatsoever.”

11. On the face of the application and the affidavit in support thereof, the Applicants do not elaborate how the consent affect their rights which were independently acquired. From the reading of the consent part of which I have recited above, the 6th – 26th Interested Parties were also claiming rights as purchasers. So that if the Applicants intend to bring a claim against the plaintiff, nothing stops them from filing their own claim.
12. The consent order of 7th March, 2022 was negotiated as between the parties mentioned in that consent. The Applicants ought to have clearly stated in the affidavit in support of the application how this order is infringing on their rights to the plots they had purchased from the Plaintiff. Both the grounds pleaded and the affidavit sworn in support of the application were very brief and said nothing about the consent other than stating it is binding them without a hearing. In the cases they have cited it was held that the interest of the party seeking to be joined should be expressed, it is enough just to tell the court, include me in the suit then?
13. On the same date of 7th March, 2022, the Plaintiff withdrew the suit as against the 1st and 3rd Defendants. The suit between the 2nd Defendant and the Plaintiff was also settled as via the consent letter dated 21st February, 2022.
14. For the consent of 21st February, 2022 it gave the plaintiff a portion of the suit land L.R 28987 I.R 150081 and under paragraph 12 thereof provided thus;

“The Plaintiff shall resolve and settle all claims over the suit land and the parcel A from the Plaintiff’s claimants. While the 2nd Defendant shall resolve and settle all claimants over the suit land and parcel B from the Defendant’s claimants.”
15. The Application does not specify which of the consents the Applicants are unhappy with. The consent as between the plaintiff and the interested party did not say they get land but refund of their monies save for those which were developed that was to be valued. This paragraph of consent between the Plaintiff and the 2nd Defendant show that it did not take away the parties’ liabilities to third parties who are not parties to this suit.
16. In summary, the Applicants have not satisfied me that their rights will be breached unless they join the proceedings which has been in court since the year 2009. Either of the consents haven’t taken away their rights to bright a claim in their own suit against the plaintiff. There are provisions of the law such as order 40 of the *Civil Procedure Rules*, available to them to preserve the suit property as they deem necessary. It is my considered opinion and I so hold that joining these proceedings where the decree is already executed will not be the best forum to the Applicants to ventilate their claim. Consequently, the application dated 23rd April, 2023 is found to be without merit and is dismissed with no order on costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY, 2024.

A. OMOLLO

JUDGE

