



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**CIVIL APPEAL NO. 8 OF 2015**

**MACHARIA KAMOCHIO**

**PATRICK GITHONGO**

**PETER KAHU NGOCHI**

**STANLEY MUIRURI GATIMU.....APPELLANTS**

**VERSUS**

**COMMISSIONER FOR CO-OPERATIVE**

**DEVELOPMENT AND MARKETING.....1<sup>ST</sup> RESPONDENT**

**DISTRICT CO-OPERATIVE OFFICER**

**NAKURU DISTRICT.....2<sup>ND</sup> RESPONDENT**

**AND**

**MBURU KINANI.....PROPOSED INTERESTED PARTY/APPLICANT**

**RULING**

The application for determination is a Notice of Motion dated 19<sup>th</sup> December 2013, filed by the Applicant, **Mburu Kinani**, seeking leave to join the suit, tender evidence and participate in these proceedings. The application is supported by the Applicant's affidavit sworn on 19<sup>th</sup> December 2013, in which he contended that he is the registered proprietor of **LR No. 3777/890, IR 96015**(hereinafter referred to as the suit property).

The Applicant's case is that Kanyeki Farmers Co-operative Society Limited (hereinafter referred to as the "Society") whose registration was cancelled through an order gazetted on 21<sup>st</sup> December 2007, claims ownership of the suit property.

It is contended that following cancellation of the registration certificate of the Society by the Commissioner of Societies, the Society appealed to the Minister of Co-operative Development and

Marketing(hereinafter referred to as the "Minister" only) who affirmed the Commissioner's decision to cancel the registration of the Society. The Applicant avers that he was joined in the appeal after the Minister found that the issues raised in the petition directly touched on him and further, that the Minister affirmed the decision of the Commissioner in cancelling the registration of the Society.

The Applicant contends that the Society has filed the instant suit challenging the Minister's decision to cancel its registration. It is his contention that he has been adversely mentioned in this suit for allegedly obtaining unjust ownership of the suit property and that unless joined to the suit, he stands to suffer prejudice and irreparable loss.

The appellants opposed the application through grounds of opposition dated **22<sup>nd</sup> April 2014**, where they contended that the Applicant lacked **locus standi** to make the application. They averred that the application was bad in law, frivolous, vexatious, incompetent and scandalous and further, that the application was an abuse of the court process.

The application was canvassed by way of written submissions. The Applicant in submissions dated **15<sup>th</sup> September 2014**, stated that the issue for determination was whether he had demonstrated an interest warranting his joinder to these proceedings. Counsel submitted that the Applicant participated in the proceedings before the Minister but was subsequently left out by the appellants while lodging this appeal. It was submitted that the Applicant had been adversely mentioned by the Appellants in this suit as having allegedly acquired ownership of the suit property unjustly and that any determination would directly affect his rights.

Reference was made to Articles **40, 47, 50, 159(2) (e)** of the Constitution and it was submitted that the Applicant had a right to protection of property; fair administrative action and the right to a fair hearing. Counsel relied on the provisions of Order 1 Rule 10 of the Civil Procedure Rules and the cases of **Meme vs. Republic (2004)1EA 124** and **Mumo Matemu vs. Trusted Society of Human Rights Alliance and 5 others (2013) eKLR** and it was submitted that the Applicant had an identifiable stake and interest in the proceedings before this court.

Further reference was made to Articles 3(1) and 159(2) (b)of the Constitution and the decisions in **Kingori vs. Chege & 3 others(2002)2KLR 243**, **Werrot & Co. Ltd & others vs. Andrew Douglas Gregory & others Nairobi HCCC No. 2363 of 1998** and **Amon vs. Raphael Tuck & Sons Ltd(1956)1 All ER 273**.

The gist of the court's finding in the aforesaid decisions was that in deciding whether a party is necessary or not, the guiding principle is whether the presence of the party would enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

In further submission, the court was referred to the treatise **Mulla: Code of Civil Procedure (Abridged) 14<sup>th</sup> Edition 2005 p 655** for the submission that where two or more persons are entitled to the same relief in respect to a transaction, they must all be joined as plaintiffs in one suit as they represent a single and indivisible right which cannot be adjudicated in the absence of the other person. The plaintiff also cited **Harlsbury's Laws of England Vol 37, 4<sup>th</sup> Edition para 216** for the proposition that a person cannot be a plaintiff unless he has a vested interest in the subject matter of the action.

The Appellants in their submissions dated **13<sup>th</sup> May 2015**, referred the court to Black's Law Dictionary p 516 definition of an interested party as one who has a recognizable stake in a matter. Counsel submitted that the Applicant was not a party to the proceedings before the tribunal and can therefore not be a party in these proceedings since he was not affected by the ruling. The Appellants

made reference to tests which have been identified in determining who a necessary party was in **Sakar's Law of Civil Procedure vol 1 p 531** and the decision in **King'ori vs. Chege & 3 others (2002) eKLR** as cited in **Laisa Mpoke & 2 others vs. Kajiado Central Milk Project "The Board" & 5 other (2012) eKLR**

It is the Appellants' submission that a necessary party is one whose presence is necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the suit. Counsel argued that the court cannot exercise its discretion to join a party who disguises itself as an interested party. The Appellants relied on the case of **Eastern Bakery vs. Castelino (1958) EA 461** and **Hagod Jack Simonian vs. Johar and others (1962)1EA 336** for the submission that an amendment should not be allowed if it causes injustice to the other side. Lastly, counsel referred to the treatise **Precedents of Pleadings by Bullen and Leake and Jacob p 130** and submitted that the paramount consideration in application for leave for amendment of pleadings is whether the amendment is sought for the purposes of raising real questions in controversy between the parties.

The issue for determination is whether the Applicant should be joined as an Interested Party to this suit. The appeal herein seeks to challenge the decision of the Minister dated **7<sup>th</sup> June 2011**, directing that the Society be liquidated. I have perused the Memorandum of Appeal dated **5<sup>th</sup> August 2011**, and one of the grounds raised is that the Minister erred in law and in fact in failing to appreciate the evidence that there was still 130 acres of land to be distributed amongst members of the Society.

The 130 acres of land aforementioned is held by the Applicant herein who claims to be the registered and indefeasible proprietor. The Applicant has averred that ownership of the suit property has been adjudicated upon in Nakuru Misc. Civil Application No. 36 of 2004, and Nakuru **HCCC No. 159 of 1998**, where the court found in his favour. The Applicant argues that he had demonstrated an interest in the proceedings before this court where he had been adversely mentioned as having unjustly acquired ownership of the property.

The guiding principles to be considered in applications for joinder of parties are well settled. The applicable law is Order 1 Rule 10(2) of the Civil Procedure Rules which provides as follows:

***"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."***

The Applicant has claimed ownership of the 130 acres of land which the Appellants allege is owned by the Society for distributorship to its members. The Minister in the ruling sought to be appealed from found that no assets/property can be said to be owned by the Society. In my view, the Applicant has demonstrated an interest in the suit property and he stands to be prejudiced if his application is not allowed. The Applicant's presence is necessary to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit.

Having considered the Notice of Motion dated 19<sup>th</sup> December 2013 and the written submissions, the Court finds it merited and it is thus allowed entirely. Costs shall be in the cause.

It is so ordered.

Dated, Signed and Delivered at Nairobi this **4<sup>th</sup>** day of **March,2016**

**L.GACHERU**

**JUDGE**

In the presence of

L Gacheru : Judge

Hilda: Court Clerk

Mr Jibril holding brief Mr Kamere for the Appellants

None attendance for the 1<sup>st</sup> Respondent

None attendance for the 2<sup>nd</sup> Respondent

None attendance for the Proposed /Interested Party/Applicant

**L.GACHERU**

**JUDGE**

**Court:**

Ruling read in open Court in the presence of Mr Jibril holding brief for Mr Kamere for Plaintiff/Respondent and absence of the other Advocates though notified.

**L.GACHERU**

**JUDGE**



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