



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT NYAHURURU

ELC CASE NO 381 OF 2017

**ETHIS AND ANTI CORRUPTION**

**COMMISSION.....PLAINTIFF/RESPONDENT**

**VERSUS**

**MIDLANDS LIMITED.....1<sup>st</sup> DEFENDANT/RESPONDENT**

**LILIAN WANGARI NJENGA.....2<sup>nd</sup> DEFENDANT/RESPONDENT**

**AND**

**NAPHTALI MUNGAI MUREITHI.....APPLICANT/INTERESTED PARTY**

**(On his own behalf and on behalf of concerned**

**Shareholders cum farmers of MIDLANDS LTD)**

**RULING**

1. The matter that is coming before me for determination is the Notice of Motion dated 9<sup>th</sup> May 2018 brought under, *Section 1A, 1B and 3A of the Civil Procedure Act, Order 51 of the Civil Procedure Rules, Article 50(1), 159 and 259(1) of the Constitution and all other enabling provisions of the Law*, where the Applicant seeks to be enjoined as an interested party to the suit on his own behalf and on behalf of concerned shareholders cum farmers of Midlands Ltd.

2. The said application is supported by the grounds on the face of it and the annexed affidavit sworn by the Interested Party/Applicant Naphtali Mungai Mureithi on the 9<sup>th</sup> May 2018.

**Applicant's case**

3. The Applicant's Counsel submitted that the 1<sup>st</sup> Defendant Company was formed in the year 2004 to steer the farmers of Nyandarua's vision and Mission of seed multiplication, storing of farm produce and value addition of their produce wherein they had applied to the Land Adjudication and Settlement for a piece of land to carry out their activities which land was subsequently registered under the name of Settlement Fund Trustee. That the 2<sup>nd</sup> Defendant herein who was the Director of the of the Land Adjudication and settlement then caused the piece of land to be divided into two portions being Nyandarua/Njabini 5851 and Nyandarua/Njabini 5852 which parcels of land measured 50 acres and 25 acres respectively. The latter parcel of land was allocated to the farmers of Midlands Ltd who started conducting their farming business thereon

4. That the reason why the applicant wanted to be enjoined in the present suit was because since January 2012 the farmers have been kept in the dark on the running of the affairs of the 1<sup>st</sup> Defendant herein, and were even kept in dark over the present suit until the year 2017 when they got wind of the same and demanded to have an extra ordinary Meeting which was held on the 24<sup>th</sup> February 2018 where a new set of directors were elected and one of their mandate was to follow the proceedings in all their matters filed in the courts.

5. That in the present suit, the interested party, the Settlement Fund Trustee and the County government having not been enjoined as parties therein, the question remains in whose interest therefore the Plaintiff was pursuing the case.

6. That the intension of the Applicant was therefore to help the court to determine all the issues so as to reach a fair and just decision since they did not trust the 1<sup>st</sup> Defendant.

7. That upon the application being allowed, the Applicant submitted, that there be orders for service with all the pleadings filed by the parties to enable the Applicant follow the proceedings in the interest of justice.

#### **Plaintiff's case**

8. While opposing the Application, Counsel for the Plaintiff herein submitted to the effect that there were set principles of law where a party seeking to be enjoined as an interested party in a suit was to prove to wit;

i. They have a stake in the proceedings

The 1<sup>st</sup> Defendant had filed its defence witness statements and documents on behalf of the shareholders the Applicants herein. The fact that the 1<sup>st</sup> Defendant has not been holding the Annual General meetings is not a basis for enjoining the Applicant.

ii. That their presence would help in determining the issues at hand.

The issue at hand was the illegal acquisition of public property and the Plaintiff in this case has the statutory mandate to recover illegally acquired property. The Interested party will therefore not add any value to the suit.

iii. That they must have sought a relief in this matter.

The only relief sought by the Applicant is to be supplied with the pleadings, which documents are already in their possession as shown in their replying affidavit.

9. The Plaintiff submitted that the Applicant had not discharged these set principles and further that the 1<sup>st</sup> Defendant had filed their list of witnesses who are all farmers and its shareholders and whose evidence shall assist the court in determining the matter.

10. That the Application was an abuse of the court process as it was being used to settle wrangles within the company and as a backdoor to raise a defence for the 2<sup>nd</sup> Defendant. The Plaintiff submitted that the Applicant had not come to court with clean hands as he had failed to disclose all the facts surrounding his intention to be enjoined as an interested party in these proceedings.

11. I have considered the submission by both parties herein and it is worth noting that this application was not opposed by both the 1<sup>st</sup> and 2<sup>nd</sup> Defendant/Respondents herein.

12. The provisions of Order 1 rule 10(2) of the Civil Procedure Code provide 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.*

13. From the above procedural rule the court has unfretted discretion to admit or strike out of proceedings a party with or without there being an application to that effect. It is trite law that the court, upon satisfying itself that that a person whose presence before it may be necessary to assist it effectually and completely to determine all questions involved in a dispute, may enjoin such person to the suit.

14. The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, defines an interested party as;

*"A person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation"*

15. Legal Notice No 117 of 2013 further provides that, a person with leave of the Court may make an oral or written application to be joined as an interested party, or the Court, on its own motion, may also join an interested party to the proceedings before it.

16. Article 50 (1) of the Constitution of Kenya, states that:

*"Every person has the right to have any dispute that can be resolved by the application of the law decided by the application of law decided in a fair public hearing before a court or if appropriate, another independent and impartial tribunal or body"*

17. In the case of **Amon vs. Raphael Tuck & Sons Ltd (1956) 1 ALL ER 273**, the court held as follows:-

*"The party to be joined must be someone whose presence before the court is necessary as a party. What makes a person a necessary*

*party?.....the only reason which makes a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectively and completely settled unless he is a party. It is not enough that the intervener should be commercially or indirectly interested in the answer. The person is legally interested in the answer only if he can say that it may lead to a result that will affect him legally. That is by curtailing his legal rights. That will not be the case unless an order may be made in the action which he is legally interest.”*

18. From the affidavit and the submission by the Applicant as well as the fact that his application was not opposed to by the Defendants and further, based on the fact that this court hesitates to place unnecessary hurdles on the access to justice and by extent access to the court. In the absence of any sign of bad faith on the part of the Applicant, I find that the Applicant has persuaded me to exercise the court’s discretion under the provisions of Order 1 Rule10 (2) of the Civil Procedure Rules to enjoin him to these proceedings as an interested party.

19. Further orders are to effect that the interested party shall be served with all the pleadings filed by the parties within the next 21 days upon delivery of this ruling.

20. I make no orders as to costs.

**Dated and delivered at Nyahururu this 17<sup>th</sup> day of July 2018.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**