



REPUBLIC OF KENYA



KENYA LAW
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Kasam & 6 others v Agricultural Finance Corporation (AFC) & another (Civil Case 25 of 2019) [2024] KEHC 16423 (KLR) (23 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16423 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE 25 OF 2019
RN NYAKUNDI, J
DECEMBER 23, 2024**

BETWEEN

**MOSES KIMUTAI KASASAM 1ST PLAINTIFF
JOSEPH KIMAIYO AMAI 2ND PLAINTIFF
PAUL KOLIL BUSIENEI 3RD PLAINTIFF
STANLEY KIPTENAI SAINA 4TH PLAINTIFF
SAMUEL KIPTARAUS MITEI 5TH PLAINTIFF
MARY JEPKEMEI LAGAT 6TH PLAINTIFF
ISAAC TOO, SILAS BIWOTT BARNABAS KIRWA (SUING AS OFFICIALS OF
SCHEMERS COMMUNITY BASED ORGANIZATION) 7TH PLAINTIFF**

AND

**AGRICULTURAL FINANCE CORPORATION (AFC) 1ST DEFENDANT
JAMES NJOROGE MBATIA T/A JOYLAND AUCTIONNERS 2ND DEFENDANT**

RULING

1. By a Notice of Motion dated 16/072024, the Applicant seeks the following orders:
 1. Spent.
 2. That this Honourable Court be pleased to strike out the 3rd Plaintiff/Applicant from the suit herein.
 3. That costs of this application be provided for.



2. The application is premised on the grounds therein and it is further supported by the Affidavit sworn by the Applicant on the same date.
3. In the Affidavit, the Applicant deposed that he was born in the year 1949 and that he is 74 years, that all his life he has been a long distance truck driver, that since 1975 to 2020 when he resigned due to the Covid-19 Pandemic. He maintained that he has not been a member and has never been a member of the 2nd Respondent's Schemers Community based organization, that he never took a loan facility from the 1st Defendant /Respondent Agricultural Finance Corporation and that he ought to be struck out as a party from the suit herein.
4. The Applicant contends that he will be subjected to irreparable loss and damage if the orders sought are not granted.
5. The application is unopposed.
6. This Court on 16/10/2024, gave parties directions that the Application be canvassed vide written submissions but none of the parties complied.

Determination

7. Having appreciated the application that is before me, I find that the only issue that arises for determination is whether the 3rd Plaintiff/Applicant, Paul Kolil Busienei, should be struck out as a party in this suit for being wrongfully enjoined to the suit.
8. Regarding party joinder, Order 1 Rule 9 of the Civil Procedure Rules stipulates that a suit cannot be dismissed for misjoinder or non-joinder of parties. The court must address the contentious issue in a way that takes into account the rights and interests of the parties in question.
9. From onset, it is noteworthy to highlight that in the Plaint dated 27/05/2019 and filed on 28/05/2019, the Applicant herein, Paul Kolil Busienei is listed as 5th Plaintiff in this suit. A keen perusal of the Verifying Affidavits on record, each sworn by every individual Plaintiff in accordance with Order 4 Rule 1(3) of the Civil Procedure Rules clearly shows that the Applicant verified the contents of the said Plaint. Further, on record there is also a copy of the "authority to represent" dated 27/05/2019 and filed on 28/05/2019, wherein the Applicant together with the other Plaintiff's duly gave the undersigned Moses Kimutai Kisasam the authority to represent them in this suit.
10. As it can be traced from the record, it is evident that from 28/05/2019 to date the Applicant has always actively participated in the proceedings herein until recently when he sought to be removed as one of the Plaintiffs in this matter. I find it rather strange that the Applicant would at this juncture infer that he was wrongfully enjoined to this suit. To my mind an application of this nature ought to be primordial at the filing to the suit. The Applicant contends that he has never been a member of the Schemers Community Based Organization and that he never took out a loan facility from the 1st Defendant.
11. It is rather unfortunate that the instant application never elicited a response from the other parties to the suit. However, be as it may, I do not see the prejudice that would befall the Applicant at this juncture as the issues highlighted by him are issues that can only be conclusively dealt with if the matter herein is heard and determined with finality. Issues surrounding his membership and the loan facility are issues that touch on the very substratum of the dispute in question and as such it would not be in the best interest to remove him as a party to the suit. Bearing in mind that the suit herein was only reinstated on 8/02/2024 after it had been dismissed for want of prosecution by the Plaintiff's own initiative to have it reinstated.



12. With regard to the issue of Costs which is the end product after any litigation is at the discretion of the Honourable Court. In the circumstances of this case I find no reason to make an order as to costs.
13. The upshot is that the Applicant's application dated 16/07/2024 lacks merit and it is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDOTER THIS 23RD DAY OF DECEMBER 2024.

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R. NYAKUNDI

JUDGE

