



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CIVIL CASE NO. 7 OF 2015

AMINA MOHAMED HARITHI PLAINTIFF

VERSUS

1. CHAKAMA RANCHING COMPANY LIMITED

2. NYAMU & NYAMU ADVOCATES

3. THE CABINET SECRETARY, MINISTRY OF DEVOLUTION & PLANNING

4. THE PRINCIPAL SECRETARY, MINISTRY OF DEVOLUTION & PLANNING

5. THE HON. ATTORNEY GENERAL

6. THE OFFICIAL RECEIVER RESPONDENTS

AND

1. ENG. JIRA

2. DANIEL KITSAO

3. ALFRED MWATHETHEPROPOSED INTERESTED PARTIES

CORAM: Hon. Justice R. Nyakundi

Stephen Macharia Kimani for the applicants

Ms. Nzamba Kitonga for the 2nd Defendant

Ms. Mwaure & Mwaure Waihiga for the Plaintiff

RULING

This is an application brought under Order 1 Rule 8 and 10 of the Civil Procedure Rules 2010 and the inherent powers of the court under Section 3A of the Civil Procedure Act. It seeks the following orders:

1. The applicants are joined in this suit in a representative capacity for the surviving or representatives of deceased shareholders of Chakama Ranching Company Limited (in liquidation), either as plaintiffs, or as affected parties whose presence before court is necessary for the effectual and complete adjudication of the issues in dispute in this action [McCean v Gyles 1902 1 Ch 911];

2. Eng. Jira, Mr. Daniel Kitsao and Mr. Mwathethe are permitted by leave of court to represent the common interests of all the other shareholders, except the current plaintiff;

3. The plaint, and/or statement of defences and summons to enter appearance are amended and re-issued as the court may direct, for service on the added parties with liberty for all the parties to plead to the amended pleadings upon service, within such time lines as the court may order;

4. That a conference for giving of directions on how further proceedings on bed of this file will be taken is ordered, preferably before the next mention date;

5. There be no order as to costs with regard to this application and the ensuing orders;

The background to this application is premised on the facts and grounds on the face of the motion and supporting affidavit of **Eng. Jira, Daniel Kitsao** and **Alfred Mwathethe** filed in court on 4.6.2018.

In response grounds of opposition were filed earlier in challenging any such relief sought by the applicants. In support of the application Learned counsel **Mr. Kimani** submitted that the applicants as they deposed ought to be allowed to participate in the proceedings as interested parties.

From the application and submissions made by counsels, I deduce the following to be the issue for determination. Whether the applicants are entitled in the circumstances of this case to be added as parties to the suit.

The Law

The capacity of the applicants to institute or join the pending proceedings is provided for under Order 1 Rule 8 and 10 of the Civil Procedure Rules which provides: Order 1 (8) (3) states:

“Any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the court to be made a party to such suit.” Further in Rule 9 it states that: **“No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.**

In the same Order, Rule 10 (2) provides as follows:

“(2) 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 to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

The principles in the case of **Judicial Service Commission v Speaker of the National Assembly & Another 2013 eKLR** state

“From the foregoing it is clear that an interested party is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly nonpartisan as he is likely to urge the court to make a determination favorable to his stake in the proceedings.”

Further in the case of **Mumo Matemu vs Trusted Society of Human Rights Alliance and 5 Others 2013 eKLR**

“Moreover, we take note that our commitment to the values of substantive justice, public participation, inclusiveness, transparency and accountability under Article 10 of the Constitution by necessity and logic broadens access to the courts. In this broader context, this court cannot fashion or sanction an invitation to a judicial standard for locus standi that places hurdles on access to the courts, except only when such litigation is hypothetical, abstract or is an abuse of the judicial process, the standard guide for locus standi must remain the command in Article 258 of the Constitution.”

Applying the above principles, I am of the view that in the pending action seeking to determine and enforce the legal and equitable rights between the plaintiff and the defendants, the final Judgment is likely to affect the rights and interest of the interested parties to the claim.

It is necessary in the application of this nature to look at all the facts that precede the Judgment and those after it and consider whether denying the interested parties a chance will in essence infringe any rule of procedure or any principle of justice. The applicants in this notice of motion have asserted existence of rights jointly and severally with respect to or arising out of the same transactions in the suit filed against the defendants.

The question of law or fact common to all the plaintiffs and defendants will arise in the action already before court. I also bear in mind the framework of the rule that no action shall be defeated by non-joinder or misjoinder of parties. My observation on the pleadings to this effect reveals the following:

- 1. The evidence likely to be filed by the interested parties in the suit may not be of a completely different character to the already filed suit.**
- 2. There would be no rights violated between the plaintiff and the defendants in the original suit before the application for joinder was made.**
- 3. This is a claim involving the suit land reference Nos. L. R. 13472/5 and 13472/6 situated within Malindi Sub-county registered in the name of Chakama Ranch Company Ltd.**

4. The applicants do qualify for joinder under Order 1 (8) (9) and (10) of the Civil Procedure Rules to the extent that the justifiability of the claim would prejudice them if deprived of the opportunity to be heard during the trial of the suit.

For the reasons stated above the court's grant the applicant joinder motion and adequate time to file pleadings on the issues they require to ventilate at the main trial. The orders as to costs to abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 23RD DAY OF OCTOBER 2019.

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R. NYAKUNDI

JUDGE

In the presence of:

Ms. Aoko for Nzamba Kitonga for the 2nd Defendant