



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & ADMIRALTY DIVISION**

**HCC. CASE NO. 172 OF 2012**

**DUBAI BANK KENYA LIMITED.....PLAINTIF**

**VERSUS**

**UKAMBA AGRICULTURAL INSTITUTE.....DEFENDANT**

**RULING**

1. The **Notice of Motion** application dated 15<sup>th</sup> August 2015 is filed by an Interested Party being South Eastern University seeking leave to be enjoined as an Interested Party / or Defendant to the suit, and that upon leave being granted, the plaintiff and Defendant be ordered to serve the Applicant with all the pleadings filed in this matter. The application also seeks a direction on costs.
2. The application is premised on the grounds set out therein and is supported by the affidavit of Professor Geoffrey M. Muluvi sworn on 15<sup>th</sup> August 2014 and further affidavit sworn on 14<sup>th</sup> November 2014.
3. The brief history of the application is that by Gazette Notice dated 15<sup>th</sup> July 2008 issued by His Excellency the President Honourable

Mwai Kibaki, South Eastern University Order was issued under Section 5 of the University of Nairobi Act. In the said Gazette Notice, the South Eastern University College was formed and was to be the successor of Ukamba Agricultural Institute under Clause 3 (3). Under Clause 3 (4) of the said Order, “**all rights, liabilities and assets held by or anybody on behalf of Ukamba Agricultural Institute existing at the commencement of this Order, shall be automatically and fully transferred to the University College**”.

The Applicant alleges that they are holding the original title for LR. No. 209/10350, the subject matter in this suit. It is alleged that the Defendant herein has filed several suits challenging the said Gazette Notice No. 102 of 2008, none of which have been determined conclusively. The above suits are as follows:-

- a. HCCC No. 136 of 2009 between Ukamba Agricultural Institute Limited and South Eastern University College and the city Council of Nairobi.
- b. Petition number 11 of 2010 between Ukamba Agricultural Institute Limited – Vs – Attorney General & South Easter University college.
- c. Petition Number 96 of 2011 between the Registrar of Titles, South Eastern University College and the Defendant.

d. Miscellaneous application number 578 of 2010 between the Defendant and National Bank of Kenya.

By a Ruling of this court dated 29<sup>th</sup> June 2012 the suit property was vested to the Plaintiff pursuant to a pending transaction between the Plaintiff and the Defendant. The Interested Party/Applicant submits that it became aware of the said Ruling long after it was delivered. The Applicant also submits that only its trustees have the mandate to dispose off the suit property and that they are holding the original title for L. r. No. 209/10350, the suit property. In that regard the said vesting order directly affects them and so they need to be joined as party herein to protect their interest.

4. The application is opposed by the Plaintiff who filed grounds of objection on 28<sup>th</sup> September 2014 and a Replying Affidavit of Hassan Zubedi sworn on 25<sup>th</sup> September 2014. Mr. Zubedi was the chairman of the Plaintiff Company, which is now under liquidation. The Liquidator, Adam Mohamed Boru, has also opposed the application vide a Replying Affidavit sworn on 21<sup>st</sup> October 2015.

5. The Respondent's case is that the Application is defective as it does not demonstrate the change of name from South Eastern University College to South Eastern Kenya University and that the Application is largely misleading and otherwise intended to obscure issues, delay and prejudice the fair trial of this suit. The Intended Interested Party has not demonstrated legal interest in the Subject matter herein and is not necessary party for the proper adjudication of the issues in dispute. The liquidator states that the suit herein is purely a contractual matter based on the Sale Agreement dated 2<sup>nd</sup> August, 2011 between the Plaintiff and the Defendant in respect to the sale of L. R. No. 209/10350 whereof the Plaintiff seeks specific performance. The Liquidator's case is that there is no privity of contract between the Intended Interested Party and either of the parties to this suit as the Intended Interested Party is not a party to the aforementioned Sale Agreement.

6. The aforesaid Liquidator states that it is clear that the Gazette Notice No. 102 of 2008, marked as annexure "B" on the supporting affidavit sworn by Professor Geoffrey M. Muluvi dated 15<sup>th</sup> August, 2014, refers to the South Eastern University College taking over Ukambani Agricultural Institute and not the Defendant herein or its properties. Section 3 of Gazette Notice No. 102 of 2008 is also clear that South Eastern University College shall be the successor to Ukambani Agricultural Institute (UKAI) and not Ukamba Agricultural institute as alleged by the Intended Interested Party or at all. The same is also evident and clear from section 4 of Gazette Notice No. 102 of 2008 that the rights, liabilities and assets held by or by anybody on behalf of Ukambani Agricultural Institute, existing at the commencement of the order, shall be automatically and fully transferred to South Eastern University College and not from the Defendant to the intended Interested Party as alleged or at all. The aforesaid Liquidator deponed that the Defendant herein is a company limited by guarantee which lawfully sold a property known as L. R. No. 209/10350 to the Plaintiff in accordance with its powers under its Memorandum and Articles of Association. **(The Defendant's Memorandum and Articles are annexed and marked as C on the supporting affidavit sworn by Professor Geoffrey M. Muluvi dated 15<sup>th</sup> August, 2014).** It is the liquidator's case that the Defendant's rights, liabilities and assets can only be transferred to other entities in accordance with the Memorandum and Articles of Association of the Defendant and not by way of gazette as alleged by the Intended Interested Party. The intended Interested Party's allegations or claims are not only irrelevant but extraneous and unnecessary in this suit. The Liquidator's position is that the Plaintiff is the vested and beneficial owner of the Subject Property whereas the Defendant is the title holder of the said property thus the intended Interested Party has no role and or interest in this suit.

7. The Plaintiff objected to this application on the grounds that the Authority filed herein is defective as it is not sealed with the Common Seal of the Applicant and therefore offends the Provisions of Order 4 Rule 1 (4) of the Civil Procedure Rules 2010. Further the Plaintiff states that the Legal Notice No. 102, Subsidiary Legislation of 2008 relied on by the Defendant relates to a completely different entity known as Ukambani Agricultural Institute which is not the Defendant herein, and that the Defendant herein is a body corporate capable of suing and being sued on its own behalf and therefore the Application and grounds relied upon are misguided and have no logical bearing. The Plaintiff's case is that the Applicant and the Defendant are engaged in Court Battles which revolve around whether the Applicant is the proper

body corporate to succeed the Defendant in Petition No. 11 of 2010 and Civil Suit No. 136 of 2009 and it will be manifestly unjust to include third parties in such succession battles, and that justice will not be served by the inclusion of the Applicant to the suit. The Plaintiff submitted that the Applicant has not annexed any documentation from the Registrar of Companies explaining the discrepancy in the name of the Defendant and the name contained in the gazette Notice 102 of 2008 and therefore the Application has no feet to stand on.

8. Parties made oral submissions in court which I have considered. I raise only one issue for determination, that is, whether the applicant has shown sufficient interest in the suit subject matter so that it can be joined to this suit as a defendant.

9. The objection on the ground that the Authority filed herein is defective as it is not sealed with the common seal of the Applicant as required under Order 4 Rule 1 (4) of the Civil Procedure Rules has been adequately responded to by the further affidavit of Professor Geoffrey M. Maluvi. The affidavit explains that the authority did not come out clearly on a photocopy. In the said further affidavit, the deponent attached an original Authority under seal in satisfaction of Order 4 Rule 1 (4) of the Civil Procedure Rules, and I am satisfied that the application is sufficiently anchored.

10. On the issue as to whether the applicant has shown sufficient interest to be allowed to join this suit, I answer in the affirmative. This is so because I believe that the alleged error which occurred causing the misspelling of the Defendants name in the Kenya Gazette aforesaid may have been merely typographical. In any event, even if it was not typographical, the same will have to be proved in court during the hearing. This court also is not at this stage duly concerned with the transaction which took place over the suit property. The validity of that transaction is the subject matter of the suit. At this stage the court merely finds that the applicant has shown sufficient interest to be joined to these proceedings. The proof of that interest remains with the hearing and determination of the suit.

11. In the upshot, I allow the application as prayed with costs in the cause.

Orders accordingly.

**READ, DELIVERED AND DATED, AT NAIROBI**

**THIS 16<sup>th</sup> DAY OF FEBRUARY 2016.**

**E. K. O. OGOLA**

**JUDGE**

**Ruling Read in open court in the presence of:**

Mr. Makenge for Plaintiff

No Appearance for Defendant

M/s Shaw h/b Kilonzo for interested party

Teresi Court Clerk