



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 161 OF 2012

MICHEAL KIMANI THAIRUPLAINTIFF

VERSUS

PETER KINYANJUI GEDRAPH1ST DEFENDANT

MONTEZUMA MONALISA FUNERAL HOME.....2ND DEFENDANT

RULING

1. The plaintiff filed this suit against the defendants on 27th March 2012 seeking the following reliefs:-
 - a. A declaration that the suit property namely, LR No. 4953/1977 Grant No. IR 67233/1 lawfully belongs to the plaintiff.
 - b. An order that the documents relating to the suit property held by both the 1st and 2nd defendants purporting to be valid be declared nullities.
 - c. A declaration that the 1st defendant is a trespasser on the suit property.
 - d. An order for the eviction of the defendants from the suit property.
 - e. A permanent injunction restraining the defendants from entering or remaining on the suit property.
 - f. Costs of the suit.
2. In his plaint dated 26th March, 2012, the plaintiff averred that he was registered as the proprietor of the suit property on 18th October 1995 following the allotment of the said parcel of land to him by the Commissioner of Lands on 28th May, 1991 and compliance with the terms thereof by payment of stand premium and other charges. The plaintiff averred that he came to learn that the 1st and 2nd Defendants had filed civil suits against each other at the Thika Chief Magistrates Court, namely, Thika Chief Magistrates Court Civil Cases Nos. 253 and 261 of 2010 respectively in which each claimed ownership of the suit property. The Plaintiff averred that after he came across this information, he applied to be joined in the said suits which application was allowed. The defendants however declined to serve him with the pleadings in those cases so that he can participate in the same. The plaintiff averred that the 1st defendant is a trespasser on the suit property and should be evicted therefrom. It is on account of the foregoing that the plaintiff brought this suit seeking the reliefs set out at the beginning of this ruling.
3. The 1st defendant entered appearance on 11th June 2012 and filed a statement of defence on 6th July 2012 in which he denied the plaintiff's claim in its entirety. The 1st defendant denied that the plaintiff is the owner of the suit property and that he had filed a suit at the Thika Chief Magistrates Court, namely, CMCC No. 353 of 2010 against the 2nd defendant. From the record, the 2nd defendant appears not to have entered appearance.

4. The suit was fixed for pre-trial directions on 17th September, 2014 when the 1st defendant requested to be given 30 days within which to comply with Order 11 of the Civil Procedure Rules. On 8th October, 2014, the matter was certified as ready for hearing although the 1st defendant had not complied with Order 11 of the Civil Procedure Rules even after the time was extended to him to do so as aforesaid. The suit was thereafter listed for hearing on 13th May, 2015.
5. On the eve of the hearing, the 1st defendant moved the court with a Notice of Motion application dated 12th May, 2015 under Order 1 Rule 10(2) of the Civil procedure Rules seeking an order that one, Victor Vincent Kangethe, the Hon. Attorney General and the Chairman, National Land Commission (hereinafter referred to as “the 3rd, 4th and 5th intended defendants”) be joined in this suit as the 3rd, 4th and 5th defendants respectively. As a result of this application, the hearing of this suit that was scheduled for 13th May, 2015 aborted. It is this application which is the subject of this ruling. The application was supported by the 1st defendant's affidavit sworn on 12th May 2015 and was premised on ground that it is necessary for the intended defendants to be joined in this suit so that the real issues in controversy between the parties may be fully and finally determined. The 1st defendant stated in his affidavit in support of the application that the suit property is registered in the name of Victor Vincent Kangethe Kinjanjui, the 1st intended defendant, who is his son and that it is necessary to join him in this suit so that the issue of ownership of the suit property can be determined conclusively. The 1st defendant annexed to his affidavit a copy of Grant No. I.R No. 67233 dated 22nd August 1995 as evidence of Victor Vincent Kangethe Kinjanjui's proprietorship of the suit property. The 1st defendant stated further that the presence of the Attorney General and the National Land Commission before this court would assist the court to determine the said issue of ownership of the suit property.
6. The application was opposed by the plaintiff through a replying affidavit sworn on 21st May 2015. The plaintiff stated that whereas he had complied with the requirements of Order 11 of the Civil Procedure Rules, the 1st defendant had failed to comply to facilitate the progress of this suit. The Plaintiff averred that the application herein was filed and served upon his advocates on 12th May 2015 on the eve of the hearing of this suit that was slated for 13th May, 2015 with the sole purpose of delaying the prosecution of this suit so that the 1st defendant can continue using the suit property which he is occupying illegally. It was further contended by the plaintiff that the 1st defendant knew all along that he is not the registered proprietor of the suit property and as such he should not have waited until this suit was listed for hearing to seek the joinder of the purported registered proprietor of the suit property in the suit. The plaintiff contended further that no reasonable grounds have been put forward to justify the joinder of the Attorney General and the National Land Commission in this suit.
7. The 1st Defendant's application was canvassed by way of written submissions. The 1st defendant filed his written submissions on 4th September, 2015 while the plaintiff's advocates made oral submissions in opposition to the application. The 1st defendant submitted that he has established that Victor Vincent Kang'ethe Kinyanjui is the registered proprietor of the suit property having been issued with the title for the said property (Grant No. IR 67233) by the Commissioner of Lands on 22nd August 1995. The 1st Defendant submitted that Victor Vincent Kang'ethe Kinyanjui who works and resides outside the country gave him the responsibility of managing the suit property on his behalf. The 1st Defendant submitted that if the plaintiff had conducted due diligence, he would have sued Victor Vincent Kang'ethe Kinyanjui who is the registered owner of the suit property instead of the 1st defendant who lacks the requisite *locus standi* to defend the suit.
8. The 1st defendant submitted that the rights and interest of Victor Vincent Kang'ethe Kinyanjui in the suit property is at stake and as such it would serve the interest of justice if he is joined in the suit as a party. The 1st defendant submitted further that since the title of the suit property was issued by the Commissioner of Lands, the National Land Commission and Attorney General are necessary parties in this dispute which concerns the ownership of the said property. The 1st defendant argued that the joinder of the intended defendants in this suit would not interfere with the progress of the suit as claimed by the plaintiff but would serve to expedite the hearing and

determination thereof on merit.

9. The plaintiff's advocate, Ms. Muigai made oral submissions in court on 21st September 2015. She submitted that, although the 1st defendant has attached to his affidavit in support of the present application, a purported Grant No. 67233 dated 22nd August 1995 showing that Victor Vincent Kang'ethe Kinyanjui is the owner of the suit property, the suit property is owned by the plaintiff and this is demonstrated through a certificate of search attached to the plaintiff's affidavit. The plaintiff's advocate argued that there is no reason why the Attorney General and the National Land Commission should be joined in this suit which concerns a dispute over private property. Counsel contended that the joinder of the intended defendants would delay the determination of this case. Counsel submitted in conclusion that the presence of the intended defendants in this suit would not assist the court to determine the issues in dispute.
10. I have considered the 1st defendant's application and the plaintiff's opposition thereto. The guiding principles in applications for joinder of parties in a suit are well settled. Order 1 Rule 10(2) of the Civil Procedure Rules 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”. In **Mulla Code of Civil Procedure Volume II, 15th edition**, the authors have quoted at page 1015 the decision of Patna High Court on the meaning of **“Settle all questions involved in the suit”** set out above. It was held to mean **“all questions relating to the subject matter of the suit arising not only between the parties to the suit but also third parties whose presence is necessary or proper for an effective and final adjudication”**.

11. In the Court of Appeal case of **Central Kenya Ltd vs. Trust Bank & 4 others, CA No. 222 of 1998** (unreported) the court stated that, **“ ... all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs”**. The plaintiff has claimed in his plaint filed herein that the 1st defendant is a trespasser on the suit property and has sought an order for his eviction from the said property. The 1st defendant has denied the plaintiff's ownership claim over the suit property and has now contended that the suit property belongs to his son, one, Victor Vincent Kang'ethe Kinyanjui and that he is only a caretaker of the said property on behalf of the said Victor Vincent Kang'ethe Kinyanjui who resides outside the country. The 1st defendant has contended that he was wrongly sued. In his affidavit in support of the application herein, the 1st Defendant has annexed a copy of Grant No. 67233 dated 22nd August 1995 said to have been issued to the said Victor Vincent Kang'ethe Kinyanjui by the Commissioner of Lands. I have noted that the said Grant is similar in all respects to the one that is said to have been issued to the Plaintiff by the said Commissioner of Lands. It is clear from the foregoing that even if this court was to determine the issues raised in this suit as between the plaintiff and the 1st defendant that would not resolve the dispute as to who owns the suit property as between the plaintiff and the said Victor Vincent Kang'ethe Kinyanjui. I am of the view that it would save the court's time and also serve the interest of justice if the issue as to whether the 1st defendant is a trespasser on the suit property and the issue as to who between the plaintiff and Victor Vincent Kang'ethe Kinyanjui owns the suit property is heard and determined together. In the circumstances, the presence of Victor Vincent Kang'ethe Kinyanjui in these proceedings will enable the court to effectually and completely adjudicate on all questions involved in this suit.
12. As concerns the Attorney General and the National Land Commission, I see no good reason as to why they should be joined as parties in this suit. It is up to the Plaintiff and the said Victor Vincent Kang'ethe Kinyanjui to show to the court how they acquired their respective titles to the suit property which as I have stated above are similar in all material respects save for the name of the

person to whom the title was issued. The National Land Commission as the new manager of public land can be summoned by either party as a witness. It is however not necessary to join it as a party to the suit. For the Attorney General, I have not at all appreciated what role it will play in these proceedings.

13. The upshot of the foregoing is that the 1st defendant's application succeeds in part. Consequently, I hereby make the following orders;

- a. Victor Vincent Kangethe Kinyanjui is added to this suit as 3rd defendant.
- b. The Plaintiff shall amend the Plaintiff to effect the joinder of the said Victor Vincent Kangethe Kinyanjui to the suit within fourteen (14) days from the date hereof.
- c. The amended Plaintiff together with the Summons to Enter Appearance shall be served upon the said Victor Vincent Kangethe Kinyanjui through the 1st defendant herein, Peter Kinyanjui Gedraph or his advocates on record.
- d. Victor Vincent Kangethe Kinyanjui shall enter appearance, file statement of defence, witness statements and bundle of documents within 30 days from the date of service of the said Summons to Enter Appearance and the amended plaintiff.
- e. The plaintiff shall be at liberty to file a reply to defence within 14 days from the date of service of Victor Vincent Kangethe Kinyanjui's statement of defence.
- f. In view of the delay in the bringing of the application herein, the plaintiff shall have the costs thereof.
- g. The suit shall be set down for hearing at the registry after the expiry of 30 days from the date hereof.

Delivered, Dated and Signed at Nairobi this 26th day of October, 2015.

S.OKONG'O

JUDGE

In the presence of

N/A for the Plaintiff

N/A for the 1st Defendant