



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYAMIRA**

**ELC CASE NO. 110 OF 2021**

**(Formerly at Environment and Land Court at Kisii ELC Case No. 5 of 2019)**

**AGNES MORAA GICHANA.....PLAINTIFF**

**-VERSUS-**

**GRACE MORAA MOGOL.....1<sup>ST</sup> DEFENDANT**

**FRANCIS NYAGAKA ONCHOKA.....2<sup>ND</sup> DEFENDANT**

**AND**

**CHARLES GICHANA ANGWENYI.....APPLICANT**

**RULING**

The Defendants have raised the issue of capacity of the Plaintiff to sue in respect to **NYANSIONGO SETTLEMENT SCHEME/107** when she is not the registered proprietor of the same. She therefore lacks authority to sue on behalf of the registered owner. After the Preliminary Objection to this effect dated 15/11/21 was filed in 16/11/2021 One Charles Gichana Angwenyi through the firm of Ombachi & Co. Advocates made an Application dated 10/02/2022 and filed in court the same date asking that he be allowed to participate in the suit as a Co-Plaintiff arguing that he did donate to One Kennedy Bosire Gichana power of Attorney to represent him in court over this matter due to his health condition. When the matter came up in court for the hearing of the Preliminary Objection, Mr. Anyona informed the court that a Notice of change of Advocates from his firm, Asati Anyona & Co. Advocates was being filed taking over from Ombachi & Company Advocates. The file was placed aside. When the same was finally filed at 2.15p.m. and Mr. Anyona was now addressing the court to the effect that he had been instructed by Mr. Charles Gichana Angwenyi to withdraw the Application dated 10/02/2022, Mr. Momanyi for the Plaintiff stood up and told the court that he had received instructions from Mr. Ombachi who insisted that he was still on record for the Applicant. By 3.00p.m. when the court rose up Mr. Ombachi had not arrived in court yet it takes only 30 minutes to drive from Kisii town where Mr. Ombachi was said to be coming from. After the issue of representation was raised, I asked the parties to argue their Preliminary Objection and having heard both Mr. Soire for the Defendants and Mr. Momanyi for the Plaintiff I formed the view that the intended Plaintiff was not serious and wanted to delay the finalisation of this case by introducing a Co-Plaintiff in order to use this as a delaying tactic. I don't want to be involved in the murky waters of who represents who and this issue will be decided by the intended party himself after reading my Ruling.

After 12 years since the alleged cause of action arose, the Applicant has now decided that his interests are in jeopardy and that he has a stake in the proceedings and would want to participate in the suit so that the needs of justice are better served. I am sure this Application was triggered by the Defendants' Preliminary Objection. The Applicant is acting in cahoot with the Plaintiff. The same is therefore not meritorious. However, should the Applicant not get the opportunity to defend his interests, he cannot bring another suit since the same would be Res-judicata. I will therefore exercise my discretion under Order 1 Rule 10 (2) of the Civil Procedure Rules and make the following orders: -

1. The Applicant, Charles Gichana Angwenyi, is allowed to participate in the suit as a Third Party under Order 1 Rule 15 (c) and not as a Co-Plaintiff.
2. The Third Party shall enter appearance within the next 15 days from today and file and serve his Defence, and also the list of witnesses and their statements (including his statement) together with the list and bundle of documents he wishes to rely upon.
3. The Applicant shall pay to the Defendants the sum of Kshs. 50,000/= within the next 7 days from today as a condition for the granting of the orders herein.

4. The matter will be mentioned in open court on 26/04/2022 to confirm compliance.
5. The case will then proceed for full hearing in open court on 04/05/2022 without fail.
6. Failure to comply with any of the above at the time given will render the order allowing the Applicant to be joined as a Third Party lapsed and the orders shall stand vacated.
7. The Plaintiff shall serve this order upon the Applicant, Mr. Charles Gichana Angwenyi, personally who will decide which Advocate will represent him.

These are the orders of the court.

**Ruling dated, signed and delivered at Nyamira this 22<sup>nd</sup> Day of March, 2022.**

**MUGO KAMAU**

**JUDGE**

**In the Presence of: -**

**Court Assistant: Sibota**

**Plaintiff: Mr. Soire**

**Defendants: Mr. Momanyi**