



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 117 OF 2012

PETER MACHARIA KARIUKI PLAINTIFF

VERSUS

JAMES KIBARA DEFENDANT

RULING

1. The applicant in the notice of motion dated 15th January, 2014 is the Attorney General of the Republic of Kenya (AG). The AG is seeking to be enjoined to this suit as a defendant on behalf of the Labour Ministry.
2. The respondent Peter Macharia Kariuki contends that he is the registered owner of LR NO. Kitale Municipality Block 8/67.
3. The Attorney General contends that he is the proper party to be sued as defendant and that the current defendant was wrongly sued as he had only been contracted by the Labour office Trans-Nzoia to fence its offices and construct certain facilities on it. The Attorney General further contends that the plot in issue had been irregularly hived off land belonging to the Ministry of Labour and that if the Attorney General is brought on board, all issues will be effectually determined.
4. The Attorney General's application is opposed by the respondent through grounds of opposition dated 17th February, 2014 and filed in court on the same day. The respondent contends that the provisions of order 1 Rule 10 (2) of the Civil Procedure Rules under which the application is brought is not available to the Attorney General as the Government is not a party to the suit. The respondent further contends that he has no claim against the Government or any of its departments and as such the orders sought cannot be granted.
5. Order 1 Rule 10 (2) 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 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.”

6. It is clear from the pleadings herein that the defendant was trading under the name of Barawa General Contractors. He was contracted by the Ministry of Labour to fence the suit land and put up some structures on it. When he moved to the site and started fencing, the plaintiff/respondent herein moved to court and filed a suit against him. It is therefore clear that he was not the proper party to be sued. He had only been contracted to fence the suit land by the Ministry of Labour. He had no interest at all in the suit property and therefore should not have

been sued.

7. The Ministry of Labour is contending that the suit land was irregularly hived off its land. The proper party to have been sued is the Attorney General on behalf of the Ministry of Labour. The real issues in dispute cannot be settled if the Attorney General is not brought on board on behalf of the Ministry of Labour. The plaintiff/respondent contends that the said irregularity was known to the Government way back in 1999 and that the respondent obtained his certificate of lease in 1997. He therefore contends that the Government's claim is defeated by Limitation of time. This argument cannot stand for now. This is an argument which can be canvassed during the hearing.

8. I find that the application by the Attorney General has merits. The same is allowed as prayed for in prayers (1) (2) and (3).

It is so ordered.

Dated, signed and delivered at Kitale on this 31st day of March, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Kiarie for respondent and M/S Munialo for Mr Wabwire for interested party (AG). Court clerk – Lobolia.

E. OBAGA,

JUDGE

31/3/2014