



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**ENVIRONMENT AND LAND CASE NO. 13 OF 2014**

**[FORMERLY HCC NO. 110 OF 2012]**

**BENJAMIN WAFULA BARASA ..... PLAINTIFF**

**VERSUS**

**PUBLIC HEALTH OFFICER & 23 OTHERS..... DEFENDANTS**

**RULING**

1. The Applicants Dickson Tom Wanjala, David Nyukuri, Francis Wanjala, Patrick Wafula Wanjala and Ali Waziri Bakari moved this court under Order 1 rule 1,6,8, (1-3) of the Civil Procedure Rules seeking prayers to be enjoined as co-Plaintiffs with Benjamin Wafula Barasa. Francis W. Wakalikha, Patrick and Ali Waziri are sued as Defendants no. 8, 10 and 23 respectively.

2. The Applicants put forward 12 grounds why the orders sought should be granted. One of the grounds is that they have a similar claim as the complainant. At paragraph (j), it states that the plot nos. Ndivisi/Muchi/4227, 4229, 4230, 4232, 4235, 4239 and 4247 must be returned to the Applicants on behalf of their deceased fathers. The application is also supported by the affidavit sworn by all the Applicants.

3. The application is opposed by the Plaintiff on the basis that the Applicants were giving false information. He wanted the Applicants (Francis & David) sued as Defendants to remain so. The Plaintiff avers that if the Applicants have any claims, they should file independent suits. He submitted further that the first Applicant lacked capacity to address court.

4. Mr. Ateya on his part submitted that he left it to the Applicants to decide which side of the suit they want to be. For the record, Mr. Ateya represents part of the Defendants who will not be affected by the orders arising from this application.

5. To begin with, the 3 Applicants were sued as 8<sup>th</sup>, 10<sup>th</sup> and 23<sup>rd</sup> Defendants can only be joined as Plaintiffs if the current Plaintiff withdrew the claim he made against them. No such withdrawal has been made. It follows therefore that there-course open to them is to apply to amend their defence and file a counter-claim to bring forth their claims against any of the parties in this suit.

6. The 1<sup>st</sup> & 2<sup>nd</sup> Applicant has not been sued by the Plaintiff. Since the Plaintiff is not happy with their joining his suit and they have also not disclosed their relationship with the Plaintiff. It is prudent in the circumstances that they file their separate suit to lodge their claim.

Probably after lodging such a suit, they can move the court to have the two suits consolidated.

7. Consequently, I find this application as misplaced, lacking in merit and disallow it. I order that each party to bear their own costs.

**DATED, SIGNED and DELIVERED** this 22<sup>nd</sup> of May 2014

**A. OMOLLO**

**JUDGE.**