



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**ENVIRONMENTAL AND LAND COURT**  
**ELC CIVIL SUIT NO. 17 OF 2013**

**JOSEPH C. NGENO .....1ST PLAINTIFF /APPLICANT**

**SELLY CHESANG LANGAT .....2ND PLAINTIFF/APPLICANT**

**AUGUSTINE KIBET TEMBUR ....3RD PLAINTIFF/APPLICANT**

**VERSUS**

**DANIEL KIPKIRUI LANGAT..1ST DEFENDANT/RESPONDENT**

**PETER KIRUI .....2ND DEFENDANT/RESPONDENT**

**NICHOLAS KOSKEI.....3RD DEFENDANT/RESPONDENT**

**RULING**

1. The plaintiffs vide a Notice of Motion application dated 7<sup>th</sup> August, 2013 under **order 8 rule 3 of the Civil Procedure Rules** and **sections 3A and 100 of the Civil Procedure Act** and all enabling provisions of the law seek a substantive order that leave be granted to the plaintiffs/applicants to amend their plaint and enjoin fourteen other plaintiffs and **David Bett Langat** as co- defendant.

2. The plaintiffs in their suit filed against the Defendants, sought an order of permanent injunction to restrain the defendants, from selling land parcel No. **Kericho/Cheptalal/1885** and more specifically the portions of land bought by the plaintiffs and the person's named in the schedule to the plaint and an order of specific performance compelling the defendants to transfer the portions of land bought by the plaintiffs and the persons named in the schedule to the plaint.

3. The plaintiffs premise their application for joinder on the grounds that appear on the face of the application and *inter alia* contend:-

(i) **That there is an error of omission which needs to be corrected.**

(ii) **That this suit was filed relying on information obtained from the Applicants and believing that the L/R NO. Kericho/Cheptalal/1885 still exists in the name of the 1<sup>st</sup> Respondent.**

(iii) **That fresh evidence which has been established that the L.R No. Kericho/Cheptalal/1885 was closed on subdivision and creates other two numbers**

being 2191 and 2192.

(iv) That the number L/R No. Kericho/Cheptalal/2191 was registered in

the name of the 1<sup>st</sup> Respondent and later closed again on sub-division and creates the numbers Kericho/Cheptalal/2236 and Kericho/Cheptalal/2237 whereby the number Kericho/Cheptalal/2236 was registered on his name and later on 12<sup>th</sup> February, 2013 the 1<sup>st</sup> Respondent transferred the whole land measuring 7.585 hectares to the one said David Bett Langat without considering the plaintiffs who have been staying in the said land for over twelve years.

(v) That it is in the interest of justice and equity that this amendment be allowed for the proper determination of the rights, interest between the parties herein.

4. The application is further supported on the grounds contained in the annexed supporting affidavit sworn by **Joseph C. Ngeno** on 7<sup>th</sup> August, 2013.

5. The defendants/ respondents have filed grounds of opposition dated 14<sup>th</sup> April, 2014 on the following grounds;

(i) **The application is incompetent and bad in law.**

(ii) **The application is an afterthought and highly speculative as the plaintiffs/Applicants have not demonstrated any reason that made them believe the existence or otherwise of L.R. NO. Kericho /Cheptalal/1885 at the time of filing the suit and why they did not exercise due diligence to ascertain the same through an official search at the relevant Lands Registry.**

(iii) **The application seeks to introduce a new cause of action inconsistent with the facts of the existing suit.**

(iv) **The amendments proposed in the application substantially alter the contents, substance and purpose of the Plaint to the extent that it is tantamount to filing an entirely new suit.**

(V) **The application is an abuse of the Court Process as it clearly depicts how the Plaintiffs/Applicants are gambling with their case and shifting goal posts.**

6. **Order 1 Rule 10 (2)** provides for joinder of parties and sets the criteria for who can be joined.

**Order 1 Rule 10 (2) provides:**

**“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”.**

**Order 1 rule 3** provides on who should be joined as a defendant and provides thus:-

**All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common questions of law or fact would arise.**

7.The issue for the court to consider in the present matter therefore would be:-

**(i) Whether the proposed plaintiffs and Co-Defendant ought to be joined as parties in the suit**

**(ii) Whether the proposed parties would be necessary parties to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.**

8. I agree with the plaintiff's submissions that the issues for determination in a suit arise only out of the pleadings of the parties and other evidential material as may be presented to the court. In the present case the plaint filed by the plaintiffs clearly seeks a determination of ownership of **L.R Kericho/Cheptalal/1885**. The plaintiff contend that they entered into a sale agreement with the registered owner, **Daniel Kipkirui Langat**, the 1<sup>st</sup> defendant herein. The plaintiffs have however come to learn that the substratum of the suit property has since changed because the title deed for L.R Kericho/ Cheptalal/1885 was cancelled after subdivision into L.R. No. Kericho/Cheptalal/2191 and Kericho/Cheptalal/2192 and further subdivision of L.R. No Kericho/Cheptalal/2191 into L.R Nos.2236 and 2237. L.R No. Kericho/Cheptalal/ 2236 has since been transferred to **David Bett Langat**.

9. As to whether the plaintiffs and proposed 4<sup>th</sup> Defendant are necessary parties to the suit to enable the court to effectually and completely adjudicate all questions involved in the suit, I answer in the affirmative. As stated above this suit involves the plaintiffs and the defendants and the reliefs that the plaintiffs seek are directed against the Defendant solely. Now that the proposed 4<sup>th</sup> defendant has allegedly purchased a portion of the same land that the plaintiffs claim from the defendants and the plaintiffs in their amended plaint are making a claim against the proposed 4<sup>th</sup> Defendant in this suit, any decision made by this court in relation to the suit property stands to affect the 4<sup>th</sup> proposed Defendant directly. It is only prudent that any party who stands to be affected by the decisions made by this court be enjoined in this suit so that they can have their day in court alongside all the other parties.

10. I do not agree with the defendant/respondents that this application is incompetent and bad in law. I also do not find it an afterthought, highly speculative and an abuse of the court process. The plaintiffs in my view has demonstrated and/or established that the proposed parties are necessary parties whose presence is necessarily to enable the court make full adjudication of this suit. I hold that they are necessary parties and I accordingly allow prayers 1 and 2 in the plaintiff Notice of Motion dated **7<sup>th</sup> August, 2013** with costs to the defendants .

Orders accordingly.

**Ruling dated signed and delivered at Kericho this 26th day of June 2014.**

**L N WAITHAKA**

**JUDGE**

**PRESENT**

Mr Orina holding brief for Mr Maengwe for plaintiff

N/A for the defendant

**L N WAITHAKA**

**JUDGE**