



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 74 OF 2020**

**GEOFFREY KIPKEMBOI LELEI..... PLAINTIFF**

**=VERSUS=**

**HARVIDNER SIGH CHARGER.....1<sup>ST</sup> DEFENDANT**

**TOM MBOYA ONYANGO.....2<sup>ND</sup> DEFENDANT**

**PETER NGA'NG'A .....3<sup>RD</sup> DEFENDANT**

**CHIEF REGISTRAR OF LANDS.....4<sup>TH</sup> DEFENDANT**

**OMAR MOHAMMED OMAR.....5<sup>TH</sup> DEFENDANT**

**MOSES NDIRANGU NDUMIA.....6<sup>TH</sup> DEFENDANT**

**RULING**

1. **Omar Mohammed Omar** the 5<sup>th</sup> Defendant herein has moved this court vide a Notice of Motion Application dated 26<sup>th</sup> October 2021, seeking for the following orders:-

*a) Spent.*

*b) The court be pleased to join Moses Ndirangu Ndumia as the 6<sup>th</sup> Defendant in these proceedings.*

*c) Pending the hearing and determination of this application, an order be and is hereby issued restraining Moses Ndirangu Ndumia, his agents, servants and any other person acting under his authority or discretion from trespassing onto the suit property, transferring any interest thereon, wasting, damaging, alienating or utilizing, developing, removing or otherwise disposing off the parcel of land known as L.R No. 21080/64 (formerly L.R No. 21080/58) situated in Loresho within Nairobi City County, which order should be enforced by Officer Commanding Station, Spring Valley.*

*d) Pending the hearing and determination of this suit, an order be and is hereby issued restraining Moses Ndirangu Ndumia, his agents, servants and any other person acting under his authority or discretion from trespassing onto the suit property, transferring any interest thereon, wasting, damaging, alienating or utilizing, developing, removing or otherwise disposing off the parcel of land known as L.R No. 21080/64 (formerly L.R No. 21080/58) situated in Loresho within Nairobi City County, which order should be enforced by Officer Commanding Station, Spring Valley.*

*e) The costs of this Application to abide the outcome of the suit.*

2. The Application is supported by grounds stated on its face as well as the supporting Affidavit of the 5<sup>th</sup> Defendant, sworn on **26<sup>th</sup> October 2021**, where he deposed that the proposed 6<sup>th</sup> Defendant has filed **MCELC E240/2021; MOSES NDIRANGU NDUMIA VERSUS GEOFFREY KIPKEMBOI LELEI** alleging that the suit property belongs to him and thus he has an interest in the matter which necessitates this court to include him as a necessary party.

3. The application is opposed. The proposed 6<sup>th</sup> Defendant, **Moses Ndirangu Ndumia** filed a replying affidavit sworn on **14<sup>th</sup> December 2021**, where he deposed that he is in occupation of the suit property and is also the owner of the suit property and that all the parties save for

the Plaintiff were illusory, vague or imaginary.

4. On 16<sup>th</sup> February 2022, **Mr. Odunga**, counsel for the Plaintiff, **Mr. Munjla**, Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and **Mr. Mbanji** who was holding brief for **Mrs. Olemba** counsel for the 3<sup>rd</sup> Defendant, informed court that they were not opposed to the said application. **Mr. Karanja** appeared for the 5<sup>th</sup> Defendant and urged the court to join the proposed 6<sup>th</sup> Defendant as a party to these proceedings. Curious to note, counsel Karanja did not address the court on the other two prayers that had been sought in the application. **Ms. Oketch holding brief for Mr. Odindo** opposed the Application and relied entirely on the 6<sup>th</sup> proposed Defendant's replying affidavit that was on record. The application was canvassed by way of oral submissions.

#### **Analysis and determination**

5. I have considered the application and the response that was filed. In my considered view, the sole issue that arise for determination is whether **Moses Ndirangu Ndumia** ought to be joined in this suit as a 6<sup>th</sup> Defendant.

6. **Order 1 Rule 10, (2) of the Civil Procedure Rules**, which provision states 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.”*

7. The Black's Law Dictionary defines “interested party” as:-

**E. K. WABWOTO**

**JUDGE**

**In the Virtual Presence of:-**

**Mr. Odunga for the Plaintiff.**

**Mr. Mungla for 1<sup>st</sup> and 2<sup>nd</sup> Defendant**

**Mrs. Olembo for 3<sup>rd</sup> Defendant.**

**N/A for the 4<sup>th</sup> Defendant.**

**Mr. Karanja for the 5<sup>th</sup> Defendant.**

**Mr. Odhiambo for the 6<sup>th</sup> Defendant.**

**Court Assistant: Caroline Nafuna.**