



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

ELC NO. 1 OF 2020

LEAH CHERONO SOWEK.....1ST PLAINTIFF

EMMANUEL KIPNGETICH CHIRCHIR.....2ND PLAINTIFF

VERSUS

PAUL KIPKURUI CHERUIYOT.....1ST DEFENDANT

RAEL JEBET.....2ND DEFENDANT

ZIPPORAH MWENDE MUTUKU.....3RD DEFENDANT

PETER KANDIE CHEBOI.....4TH DEFENDANT

VISTOR BETT.....5TH DEFENDANT

JUDAH KIMUGE.....PROPOSED 6TH DEFENDANT

RULING:

1. This is a ruling in respect of a Notice of motion dated 24th February, 2021 in which the 7th proposed Defendant/ Applicant seeks to be joined in these proceedings as the 7th Defendant. The proceedings herein relate to ownership of LR No. Uasin Gishu/Ilulla Settlement Scheme/128 which was registered in the name of Philip Kipchirchir Sowek (Deceased) who died on 14th February, 2019.

2. The Deceased's land was subdivided and it resulted in title Nos. Uasin Gishu/Ilulla Settlement Scheme/1722 to 1740. Some of these sub divisions are the subject of those proceedings. The Applicant contends that he is the registered owner of LR. Nos. Uasin Gishu/Ilulla Settlement Scheme/1722 and 1723 yet the Plaintiffs/Respondents have not sued him. He contends that any orders which this Court will give arising from this case will affect him and that it is therefore necessary that he be joined in this case.

3. The Respondents have opposed the Applicant's application based on a replying affidavit sworn on 20th September 2021. The Respondents contend that the titles which the Applicant holds are forgeries and that the titles are subject of a criminal case filed against the Applicant in Eldoret Chief Magistrates Court Criminal Case No. E832 of 2021 where the Applicant is facing 12 Counts. The Respondents therefore contend that by admitting the Applicant into these proceedings, they will be greatly prejudiced and that the Applicant will seek to sanitize the forged titles.

4. The parties were directed to dispose of the application by way of written submissions. The Applicant filed his submissions on 12th October, 2021. The Respondents filed their submissions on 17th November, 2021. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination in this matter is whether the Applicant has met the threshold for joinder in these proceedings.

5. The Principles to be considered in determining whether to join a party to proceedings were well captured in **Civil Appeal No 70 of 2009, Pravin Bowry -Vs- John Ward & another (2015) Eklr** where reference was made to the case of **Deported Asians Property Custodian Board -Vs- Jaffer Brothers Limited (1999)/ EA 55 (SCU)** and **Civicon Limited -Vs- Kivuwatt Limited and 2 others EKLr** where it was stated as follows:-

"A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party's presence is necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.... For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown: Either it has to be shown that the orders, which the Plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, on (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person." (Emphasis by underline)... "The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.""Again the power given under the Rules is discretionary which discretion must of necessity be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined,""From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I Rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial."The issue was also the subject of consideration by this Court in Meme v. Republic [20041KLR 637 where it was held that joinder of parties will be permissible:

- i. "Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings;**
- ii. Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and**
- iii. Where the joinder will prevent a likely course of proliferated litigation. "**

....This Court in Commercial Bank of Africa Ltd. v. Isaac Kamau Ndirangu Civil Appeal No. 157 of 1991 interpreted "any person" as anyone who is adversely affected by the decision. This means that the definition of a person is not restricted to the parties in the proceedings culminating in the decision sought to be appealed In Central Kenya Limited v. Trust Bank Ltd and Others (supra), this Court stated that:

"The paramount consideration is whether the party concerned is necessary for the effectual and complete adjudication of all the questions involved in the suit".

6. In the instant case, the Respondents through their amended plaint dated 9th July, 2020 are seeking eviction orders against all occupants of the subdivisions which arose from the Deceased's property. Those sought to be evicted include the Applicant who holds two titles. There is no doubt that the Applicant has been charged in Eldoret Chief Magistrate's Court in Criminal Case No. E832 of 2021. The law is clear that a person is presumed innocent until proven guilty. The Applicant has not been found guilty of the charges levelled against him.

7. These are Civil proceedings which can go hand in hand with Criminal proceedings. What this Court will consider is the evidence to be adduced. It does not mean that in admitting the Applicant in these proceedings, the Court has accepted that he has a valid title. Prima facie, the Applicant has demonstrated that he ought to be joined in these proceedings as the orders which are likely to be given will adversely affect him. I therefore find that the Applicants application is well founded. I allow the same with the result that the Applicant is hereby joined in these proceedings as the 7th Defendant. All pleadings in this matter shall be served upon the 7th Applicant within 21 days. The costs of this application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 10TH DAY OF MARCH, 2022.

E. OBAGA

JUDGE

IN THE VIRTUAL PRESENCE OF;

MS. KIBET FOR MR. KIBII FOR 7TH DEFENDANT.

COURT ASSISTANT –ALBERT

E. OBAGA

JUDGE

10TH MARCH, 2022