



**REPUBLIC OF KENYA**

**High Court at Kitale**

**Civil Suit 59 of 2011**

**ZIPPORAH C. MAIYO**

**RAEL CHEPNGETICH**

**LILIAN CHEPTANUI .....PLAINTIFFS**

**VERSUS**

**SILAS KIPTANUI ..... DEFENDANT**

**R U L I N G**

This is a ruling in respect of a Notice of Motion dated 25th June, 2012. It is brought under the provisions of Order 1 Rule 10 Sub rule 4 of the Civil Procedure Rules. The Applicant seeks to be joined as a Defendant to the suit herein. The application is supported by the Affidavit of Tito Kiplimo Chepkwony, the Applicant herein sworn on 25th June, 2012. The Applicant depones that the Kwanza Land Disputes Tribunal awarded him 5 acres out of the suit land. The award of the Tribunal was adopted as judgment of the court vide Kitale Chief Magistrate's Court Land Case No. 34 of 2011. Though he indicated in his affidavit that he had annexed the proceedings of the Kwanza Land Disputes Tribunal marked "TKC 1" there was actually no annexure as such. He further deponed that he allowed the Defendant in the suit Silas Kiptanui who is his cousin to take care of the 5 acres which the Tribunal gave him. He therefore contends that if he is not joined as a party, the dispute herein will not be conclusively determined and that he will be condemned unheard.

The application was opposed by the replying affidavit of Zipporah Chelangat Maiyo who swore the same on behalf of her two other Respondents. The Respondents contend that the application is an abuse of the process of court and that the Applicant has not demonstrated that he is entitled in any way to the three parcels of the suit land.

I have carefully considered the Applicant's application as well as the opposition thereto by the Respondents. A party can be added to a suit if it is in the opinion of the court that such addition will enable the court to effectually and conclusively determine the issues in dispute. In the present case, the Applicant argues that he was given 5 acres out of the suit land by Kwanza Land Disputes Tribunal. He further stated that he allowed the Defendant in the suit to work on the land on his behalf. Though there is no annexure of the Tribunal's proceedings, in the interest of justice, I had to call for Chief Magistrate Land Case No 34 of 2011 and noticed that indeed the Kwanza Land Disputes Tribunal awarded the Applicant 5 acres. The Applicant was the claimant in the suit land and the 1st Respondent herein Zipporah Maiyo was a party to the Tribunal proceedings. Having confirmed that the Applicant was a party to the Kwanza Land Disputes Tribunal, I find that it is necessary that he be added as a Reply to this suit as a Defendant so that the issues in question can be finally and conclusively determined. The application is therefore meritorious. The same is allowed with costs. The plaint shall accordingly be amended and the same served with summons upon the new Defendant only.

It is so ordered.

**Dated, signed and delivered in Open Court on this 19th day of March, 2013.**

**E. OBAGA**

**JUDGE**

Mr. Kaosa for the Plaintiff/Respondents – Present

Applicant in Person - Present

**E. OBAGA**  
**JUDGE**  
**19/03/2013**