



REPUBLIC OF KENYA

High Court at Kitale

Civil Suit 79 of 2011

PAUL MUREITHI JORAM & 9 OTHERS PLAINTIFF

V

EVANS ORENGE ONDERI DEFENDANT

RULING

By an application dated 18/09/2012, the Applicants moved the Court for the following orders:-

- 1) *That the application be certified as urgent and service be dispensed with.*
- 2) *That the Court be pleased to permit the registered proprietors of LR No. Kitale Municipality Block 7/343, 344, 345 and 346 to be enjoined as defendants in this case.*
- 3) *That the District Land Registrar, Trans-Nzoia be compelled to give out Certificate of Search in relation to the parcels referred to in Prayer 2 hereinabove for purposes of establishing the identities of the said proprietors.*
- 4) *That costs be in cause.*

The application is based on the Supporting Affidavit of Paul Mureithi Joram one of the Applicants herein who depones that he has been informed by his advocate that the outcome of the suit is likely to affect the proprietors of Kitale Municipality Block 7/343, 344, 345 and 346 as a common question of law may arise. The deponent further contends that the District Land Registrar Trans Nzoia has declined to issue him with Certificate of Search in respect of the aforementioned suits to enable him know the proprietors of the parcels.

The application was opposed by the Respondent Evans Orenge Onderi based on his Replying Affidavit sworn on 6th February, 2013 and filed in Court on 19th February, 2013. The Respondent contends that he is proprietor of Land Parcel No. Kitale Municipality Block 7/342 which he purchased from its previous owner Elizabeth Muthoni Guantai on 19/04/2011. He further contends that he does not know the proprietors of Land Parcel Nos. Kitale Municipality Block 7/343, 344, 345 and 346 and has no interest in the same. He contends that the Applicant has not shown any good reason why the proprietors of the aforesaid parcels ought to be enjoined to this suit and argues that the application is merely intended to stall the quick disposal of this suit. He prays that the application be dismissed as the Applicants are at liberty to bring separate suits against the proprietors of the said parcels if they have any claim against them.

The parties herein agreed that the application be disposed off by way of written submissions. All the parties have already filed their submissions. I have gone through the application as well as the Replying

Affidavits and the submissions by the parties herein. Before a Court can allow an application for joinder of parties, it must be satisfied that there is need to do so. In the present application it was upon the Applicant to show that there is need to join the defendants. The Applicants in their Affidavit have merely stated through one of them that their lawyer has advised them that there is likely to arise a common question of law which necessitates that they be joined as defendants. There was no attempt at all by the Applicants to demonstrate how joinder of the intended Defendants will assist in resolving the issues in this matter. An order for joinder of Parties cannot first be given merely on ground that an Applicant feels that there is likely to arise a common issue of law. The said intended defendants are not named. The reason given for non disclosure of their names is that the District Land Registrar has refused to provide searches to ascertain their identities. There was nothing given in the Affidavit to show that the deponent had tried to get a search without success. A Certificate of Official Search is given on condition that an Applicant of the same has made an application for it and has paid the requisite fee. A District Land Registrar cannot just refuse to give an official search. The Applicant is not being candid. A register kept for land records is a public document and anyone is entitled to a copy of the same upon payment for it. I do not think that there are reasons given to warrant the Court to compel the District Land Registrar to provide official Search Certificates. The Applicants have in their list of documents filed a copy of Official Search in respect of the land owned by the Respondent which is the subject of this suit. It is therefore ironical for the same Applicants to claim that they cannot get official searches in respect of the other parcels of land. In any case, the Applicants have not demonstrated that the joinder of the said unnamed defendants will assist the Court to adjudicate on a common relief by the Applicant which touches either on one or all of them. I find that this application has no merits. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, signed and delivered in Open Court on this 24th day of April, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Yano for the Defendant/Respondent

CC: Joan.

E. OBAGA

JUDGE

24/04/2013