



**REPUBLIC OF KENYA**

**High Court at Kitale**

**Civil Suit 103 of 2007**

**ROBERT MUKARANI SIMITI**

**JOSEPH WANDAKA**

**FRED WANGILA .....} PLAINTIFFS**

**VERSUS**

**PETER BADHIA**

**PETER WEKESA**

**ANN WEKESA .....} DEFENDANTS**

**R U L I N G**

This is a ruling in respect of an application by way of Notice of Motion dated 13th June, 2011. The application seeks leave of court to allow the Defendants to amend their defence as per the annexed draft annexed to the Supporting Affidavit. The application also seeks to join Cynthia Pierce and Rodany Barasa as interested parties. In the body of the application, it was indicated that the application was to be supported by the Affidavit of Peter Badhia but this is not the case as the Affidavit was sworn by Jeremiah Onger Samba, the Advocate for the four Defendants. The said Peter Badhia who is mentioned in the body of the application is the 1st Defendant. Mr. Samba depones that he has been informed that the two interested parties sought to be joined to the suit are trustees of Faith Children's home and should therefore be joined as interested parties. He further depones that it is necessary for the defence to be amended as there have been new developments.

The application was opposed by the Plaintiff/Respondent based on the Replying Affidavit sworn by Robert Mukarani Simiti the 1st Defendant/Respondent herein. The deponent takes issue with the fact that in the body of the application, it is indicated that the application is supported by the Affidavit of Peter Badhia but that this is not the case as the Affidavit was sworn by Jeremiah Onger Samba, Advocate for the Defendant/Applicants. He contends that this is wrong because the Advocate has sworn the Affidavit on contested issues which should not be the case. The Applicant also contends that there has not been shown any nexus between the interested parties, the Defendants and or the Plaintiffs.

I have carefully considered the application herein vis-a-vis the prayers sought herein. The application herein is firstly brought under the provisions of Order 1 Rule 10 of the Civil Procedure Rules. Section 10 (2) of the Civil Procedure Rules among others provides that on application by either party, the court may order joinder of a person 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. Before an application for joinder of a party is allowed, it must be demonstrated to the court that his/her presence in court is necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the suit. In the present case, it has not been demonstrated that the presence of the two parties sought to be joined are necessary to enable the court to effectually and completely adjudicate upon the issues. It is merely said that the two are trustees of Faith Centre Children's Home. Faith Centre Children's Home does not feature in the pleadings herein especially the plaint and defence. The name of Faith Centre Children's Home is only mentioned in paragraph 6 of the proposed amended defence and in the counter-claim. It is therefore not clear on how the inclusion of the two interested parties will assist the court in determining the issues in controversy. It has not been shown that Faith Centre Children's Home where the two interested parties are said to be trustees is a necessary party which should be included in the case. It was incumbent upon the two interested parties to demonstrate that their inclusion in the suit was necessary. This should have been done by themselves and not through their lawyer swearing an Affidavit on their behalf.

Before leave to amend a pleading is granted, the Applicant must show that there is need to do so. In the present case, the Applicants are seeking an order in the proposed counter-claim deleting the name of Hope Centre Children's Home and substituting thereof the names of Dr. Timothy Harold Pierce, Cynthia Beeson Pierce and Rodany Barasa as trustees of Faith Centre Children's Home in respect of Kiminini/Kinyoro Block 4/27 and 28. The Applicants are silent on the existence of Faith Centre Children's Home. They have not shown the basis upon which they want the said Faith Centre Children's Home to be registered as owner of the two parcels in place of Hope Centre Children's Home. Leave to amend cannot just be granted for the sake of it or to suit the interests of one party. An amendment can only be allowed if it is demonstrated to court that it is necessary and that it will place all issues before the court for adjudication and settlement. The failure to give out details in support of the amendment and the addition of the two parties has clearly been occasioned by the deponent of the Supporting Affidavit shying away from deposing to contested matters which are in controversy. This has not assisted his client's case. The upshot of this is that I find that the parties sought to be joined have not demonstrated that they ought to be joined as parties. The proposed amendments are also not well funded for reasons I have given hereinabove. The upshot of this is that the application herein is dismissed with costs to the Plaintiffs/Respondents.

It is so ordered.

**Dated, signed and delivered in Open Court on this 15th day of May, 2013.**

**E. OBAGA  
JUDGE**

In the presence of Mr. Nyakibia for Plaintiff and Mr. Ingosi for Mr. Samba for Defendant.

Court Clerk: Koskey.

**E. OBAGA  
JUDGE  
15/05/2013**