



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**LAND AND ENVIRONMENT COURT**

**CIVIL CASE NO. 33 OF 2011**

**MACIAZINEX AFRICA CO. LTD.....PLAINTIFF**

**VERSUS**

**MICHAEL MUGO**

**DAVID GATHAMBO.....DEFENDANT**

**R U L I N G**

The application before court is dated 3rd May 2013 and supported by the affidavit to Kenneth C. Kiptoon, the custodian of the asset of the applicant. The applicant is seeking an order that he be joined as a defendant in the suit to enable the court to effectively determine the controversy.

The application is grounded on the fact that the applicant was allocated the suit plot by the Commissioner of Lands in 1981 and has been in possession of the said plot since allocation and has leased the same to garage operators. The allotment letter has not been revoked.

In the supporting affidavit Mr. Kenneth Kiptoo depones *inter alia* that the suit property is a list of assets belonging to the applicant. He is in possession and has been leasing it to garage operators.

The plaintiff opposed the application by filing a replying affidavit of Joseph Machira Muguero sworn on 16/5/2013. The gist of this affidavit is that the application is a disguise of the one dismissed on 13.3.2013. he further states that the plaintiff is the registered proprietor of the suit premises and no right can arise or be ventilated by the defence or the applicant.

This court finds that the application dated 27.2.2013 was dismissed on 13.3.2013 on the basis that the applicant could not be brought into the matter as a 3rd party as there was no claim of indemnity or contribution against the defendant by the applicant. The plaintiff in this matter is praying for judgment against the defendants for orders that they vacate and yield possession of the premises to the plaintiff or an order of eviction against them and mesne profits at the rate of Kshs.20,000 per month from 3/12/2007 till yielding possession.

In the application dated 3rd May 2013, the applicant seeks an order that she be added as a defendant in this suit in order to enable the court to effectively determine all issues in controversy. The applicant was allocated the suit plot by the Commissioner of Lands in 1981 and has been in possession of the said plots since allocation and has leased the same to garage operators. The letter of offer has never been revoked.

The applicant annexed the letter of allotment which is in respect to the said plot and also agreements with garage operators. Learned counsel for the applicant *Lucy Mwai* argued that joining the applicant as a defendant would enable the court to determine the issue under controversy.

*Mr. Nderi* opposed the application and relied on the affidavit sworn on 16/5/2013 and argued that the plaintiffs claim is against the trespassers on his land who are the defendants. He argued that the receipts annexed by the applicant do not show any link between the defendants and the alleged receipts.

I agree with **Lucy Mwai** that it would be premature to imagine what the applicant would plead, and hold that the applicant being the defendants' landlord and in possession of the suit parcel should be joined in the matter as defendant to enable the court make an informed decision.

The upshot of the above is that the applicant is allowed with costs in the cause. The applicant to file a defence within the next 14 days.

***Dated, signed and delivered at Nyeri this 28th day of June 2013.***

**A. OMBWAYO**

**JUDGE**