

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

LAND AND ENVIRONMENTAL DIVISION

ELC CIVIL SUIT NO. 568 OF 2011

LOISE WANJIRU MWANGI (Suing by her lawful

Attorney VICTORIA WAMBUI KIBUNJA PLAINTIFF

VERSUS

PATRICK MWAURA.....DEFENDANT

RULING

The application filed herein by the Defendant is by way of Notice of Motion dated 6th December 2011. The Defendant is seeking orders that this Honourable Court be pleased to order that the name of John Irungu Kamau (hereinafter referred to as the intended 2nd Defendant), be added in this suit herein as Defendant, and that the Plaintiff be amended in such manner as may be necessary. Further that amended copies of the summons and of the Plaintiff be served on the said intended 2nd Defendant and on the Defendant herein. The Plaintiff in the Plaintiff dated 10th October 2011 and filed on 19th October 2011 claims to be the owner and entitled to possession of the land known as Ruiru West/Block 1/308 (hereinafter referred to as the suit property), and alleges the Defendant herein is a trespasser on the said land. The Plaintiff is seeking prayers for injunction and eviction against the Defendant in the said Plaintiff.

The grounds for the application are that the presence of the intended 2nd Defendant before Court will be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, and that that the Orders sought by the Plaintiff would legally affect the interests of the intended 2nd Defendant. The Defendant in his supporting affidavit sworn on 6th December 2011 states that his deceased mother, Eliketa Wanjiru, was the original owner/allottee of the suit property, and acquired it in 1974 after payment and ballot from Githunguri Constituency Ranching Co. Limited. Further that his deceased mother transferred the suit property to the intended 2nd Defendant on 23rd June 1990.

The Defendant avers that he has been in occupation of the suit property continually since 1974 , and with the full knowledge and permission of the intended 2nd Defendant after the same was transferred to him. The Defendant also avers that the suit premises have never been vacant at any particular time and that the intended 2nd Defendant still owns the suit premises as he has never sold it to anyone.

The Defendant has annexed a copy of the transfer dated 23/06/1990 done by his deceased mother to the intended 2nd Defendant, copies of receipts of payments made with respect to the suit property by the intended 2nd Defendant, and a copy of a share certificate of Githunguri Constituency Ranching Company Limited issued to the as the intended 2nd Defendant. The Defendant has also annexed a copies of letters dated 18/8/1990 and 18/11/2011 from Githunguri Constituency Ranching Company informing that the intended 2nd Defendant is the one registered as the owner plot Number Ruiru West Block 1/308.

The Plaintiff in a Replying Affidavit sworn by her attorney Victoria Wambui Kibunja on 18th January

2011 states that it would serve no purpose to enjoin the intended 2nd Defendant in the suit, as he holds no legal documents to suggest ownership of the suit property, other than letters purported to be from Githunguri Ranching Co. Limited. The Plaintiff also states that the certificate of lease issued to her with respect to the suit property is a genuine legal document, and enjoining other parties is a way of delaying this court process.

After consideration of the pleadings filed in this case and submissions by the parties, I find that the main issue before the court is whether the intended Defendant can be joined as a necessary party to this suit. The application is brought pursuant to the provisions of section 3A of the Civil Procedure Act (Cap 21), and Order 1 Rule 10(2) and (4) and Order 51 Rule 1 of the Civil Procedure Rules. One can be joined as a party under Order 1 Rule 10(2) if the Court considers the person to be a necessary party for the effectual and complete determination of all the issues in the suit. This will be the case even if one is not a proper party as envisaged in Order 1 Rule 3, for reason of no cause of action being shown to exist against the party.

In the present application both the Plaintiff and the intended 2nd Defendants have made claims over the subject matter of the suit filed herein. Any orders sought by, or granted to the Plaintiff in the suit are likely to affect the legal interests claimed by the intended 2nd Defendants over the suit property. In addition this suit will also provide the fora for the intended 2nd Defendant to canvass his claim, and will forestall the bringing of additional suits on the suit property. For the foregoing reasons I accordingly add John Irungu Kamau as the 2nd Defendant to the suit filed herein. I also order the Plaintiff to amend the Plaintiff in such manner as may be necessary, and to serve the amended Plaintiff and summons on the Defendants within 15 days of today's date.

The costs of the application shall be in the cause.

Dated, signed and delivered in open court at Nairobi this __6th__ day of ____February____, 2012.

P. NYAMWEYA

JUDGE