



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
ENVIRONMENTAL & LAND CASE 564 OF 2010

ASHFORD KANGETHE PLAINTIFF

VERSUS

CHAKA LIMITED & 2 OTHERS DEFENDANTS

RULING

The chamber summons dated 29th November, 2010 is by **GRACE WAIRIMU SORORA**. It is bought under the provisions of **Order 1 Rule 10 (2) 13 and 22 of the Civil Procedure Rules and Section 3A of the Act**. The applicant seeks for joinder in this suit on the grounds that at the material time, she has been in possession of the suit premises. Sometimes in November 2010, she learnt about the existence of the suit. According to the applicant, there is another suit being **HCCC NO. 723 OF 2008** which is touching on the same suit property. The parties to this suit are aware of the pending suit, that notwithstanding they did not deem it fit to have the applicant enjoined in the suit.

In further arguments, Mr Anzala learned counsel for the applicant, submitted that the applicant has duly obtained letters of administration in respect of her husband's estate. Moreover, the applicant jointly with her late husband used to occupy the suit premises and upon the death of her husband the applicant took over the running of the bar and restaurant on the suit premises thus it is the applicant who is in occupation of the suit premises.

Under the provisions of **Order 1, rule 10 of the Civil Procedure Rules**, the court can order joinder of a party whose presence before court is necessary for effective and complete adjudication of all questions in regard to a suit. Moreover, the plaint filed by the plaintiff and the supporting affidavit to the application for injunction shows that the plaintiff bought the property in the condition it was including the squatters.

This application was opposed by the plaintiff, counsel for the plaintiff relied on the replying affidavit of the plaintiff sworn on 2nd March, 2011. It was submitted that he applicant lacks *locus standi* as the plaintiff bought the suit premises by way of an auction from Pan Africa Credit and Finance Limited; that company was later wound up and placed under liquidation. The applicant is not privy to the agreement, she should have sued the original owner, that is, Kibutho Holdings before it was placed under liquidation. According to Mr Kipkosgei, the applicant has not demonstrated any interest in the cause of action to justify her being joined in the suit.

It was further argued that in HCCC No. 723 of 2008, the applicant seeks for an order that she be declared the owner of the suit premises on the basis of adverse possession; the applicant should have applied for consolidation of the suits instead of an order to be joined.

The issue for determination in this application is whether the applicant should be joined in this suit as an interested party. There is no dispute that the applicant occupies part of the suit premises, whether in her own capacity or as the widow of the late Francis Sorora Oloitip. Under the provisions of **Order 1**

rule 9 and 10 of the Civil Procedure Rules, this court has discretion to substitute or add parties to proceedings at any stage provided their presence is necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

It is evident that the applicant has filed another suit being, **HCCC No. 723 of 2008** at Milimani Commercial Court which was between the plaintiff's husband and the 1st defendant over the same subject matter. The plaintiff obtained letters of administration to substitute her late husband in those proceedings.

I am satisfied that the applicant had demonstrated that, firstly she has an interest in the subject matter in dispute and secondly, she is a necessary party in this suit. In the event that it turns out that she has no interest at all, that will not prejudice any party to these proceedings.

For the aforesaid reasons, I allow the chamber summons dated 29th November, 2010 and order **Grace Wairimu Sarora** be enjoined as an Interested Party in this suit.

Costs of this application be in the cause.

Ruling read and signed this 30th day of March, 2012.

MARTHA KOOME

JUDGE OF APPEAL

Note:

This application was heard and concluded on 6th December, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceeded to write and append my signature thereto in my new capacity.