REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)

MISCELLANEOUS CIVIL SUIT 19 OF 2012

IN THE MATTER OF THE REGISTRATION OF TITLES ACT, CAP 281 OF THE LAWS OF KENYA

IN THE MATTER OF SECTION 69 AND 69A OF THE TRANSFER OF PROPERTY ACT 1882 INDIA AS AMENDED BY THE INDIAN TRANSFER OF PROPERTY (AMENDMENT) ACT 1959

KENYA COMMERCIAL BANK LIMITED……. PLAINTIFF

VERSUS

THE REGISTRAR OF TITLES……..….. 1ST DEFENDANT

THE HON. ATTORNEY GENERAL ……..……..…. 2ND DEFENDANT

RULING

The Originating summons herein was filed on 18th January, 2012. Upon service, the Attorney General entered appearance for both defendants and delivered a Replying Affidavit by one Charles Kipkurui Ngetich, a Land Registrar. In it, he contended that the caveat, the subject matter of the Originating Summons, was requested for by the Commissioner of Co-operatives.

For the foregoing reasons, on 20th April, 2012 the Attorney General filed a summons under Order 1 Rule 10 (2), 25 of the Civil Procedure Rules seeking leave to join the Commissioner of Co-operative Development as a 3rd Defendant. Mrs. Koech submitted that she can only be able to get a Replying Affidavit from the holder of that office if he was duly joined in these proceedings.

Ms. Odari, learned Counsel for the Plaintiff objected to the application on the ground that the Commissioner of Co-operatives being a government officer it was not necessary to join him in these proceedings. That Section 12(1) of the Government Proceedings Act is clear that in all proceedings against the Government, its departments or its officers such proceeding shall be against the Attorney General who is already a Defendant in these proceedings, that the Commissioner of Co-operatives could still give a Replying Affidavit without being joined. Ms Odari further submitted that under Section 57 of the Registration of titles Act, the duty to confirm whether there is a reason or ground to register a caveat is upon the 1st Defendant, and therefore the Caveator (the Commissioner of Co-operatives) was not a necessary party, that there has been undue delay in making the application. Counsel urged the court to decline the application.

I have considered the application, the Affidavits on record and the submissions of Counsel. It is not in dispute that the directions in this matter were given on 28th February, 2012. Indeed, the date of 24th April, 2012 when the application by the Attorney General was heard, had been set aside for the hearing of the submissions in respect of the main Originating Summons. Clearly there had been undue delay.

Be that as it may, Order 1 Rule 10(2) of the Civil Procedure Rules allows an application such as the one before me to be made at any stage of the proceedings provided good cause is shown. Since the Attorney General has indicated that it was not possible to get a Replying Affidavit from the party sought to be joined unless so joined as a party to these proceedings, I will excuse the delay.

Further, I do note that the opposition by Ms. Odari is on the basis that the joinder shall cause a delay. There is no other prejudice to be suffered by the Plaintiff if the application was allowed. Indeed, the position the Respondent took is that the Replying Affidavit could be filed even without the Commissioner being made a party to the proceedings.

That being the case and for the reason that Mrs. Koech insisted that the Commissioner of Co-operatives is a necessary party, I do allow the application. Accordingly, the Commissioner for Co-operatives be and is hereby joined as the 3rd Defendant. He shall file and serve a Replying Affidavit within 14 days of the date hereof. Thereafter the matter shall proceed with hi-lighting of submissions as earlier on scheduled. Any of the parties may file supplementary submissions to address the issues that may be raised by the Replying Affidavit by the Commissioner for Co-operatives.

DATED and delivered at Nairobi this 21st day of May, 2012.

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A. MABEYA

JUDGE