



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL CASE 42 OF 2011

DINAH JEPCHIENG CHEPYEGON.....1ST PLAINTIFF

RODAH CHEPTOO.....2ND PLAINTIFF

VERSUS

KEVIN KIPTANUI KIMWATAN.....DEFENDANT

RULING:

The Notice of Motion is brought under Order 8 Rules 3, 5 and 7 and Order 40 Rules 1 & 4 of the Civil Procedure Rules and under Sections 1A, 3, 3A and 63 (c) of the Civil Procedure Act.

Counsel stated at the hearing that this Application had been served on all the Respondents but none of them are in attendance.

The court notes that on the 19th November, 2011 the Applicants had obtained temporary injunctive orders as against the 1st Defendant pending the hearing and final determination of the suit, herein.

The Applicants now seek leave of the court to amend the Plaint so as to enjoin the 2nd, 3rd, 4th and 5th Defendants.

The Applicants are also seeking for a temporary injunctive order as against the 2nd, 3rd, 4th and 5th Defendants.

Firstly this court will deal with the application to amend the Plaint herein. The application to amend is hereby allowed. The Applicants shall file and serve the Amended Plaint upon all the Defendants herein within fifteen (15) days from the date hereof. The 1st Defendant is at liberty to file an Amended Defence. The 2nd, 3rd, 4th and 5th Defendants shall file their defences within fifteen days after service is effected.

The second issue this court will deal with is the application seeking injunctive orders as against the 2nd, 3rd, 4th and 5th Defendants.

The law requires that when a Plaint is filed, summons must then issue and thereafter service of the Plaint and summons must be effected on the Defendants.

The Applicants are attempting to put the cart before the horse. The Defendants are yet to be enjoined therefore the injunctive orders sought cannot be granted or effected as against parties who are not privy to the proceedings.

The Applicants are advised to first file and serve the Amended Plaintiff, upon the Defendants. The Applicants can then make the application to the court requesting for the said injunctive orders.

For the reasons stated above, the second leg of the application is disallowed as it is premature.

The application is therefore partially successful and partially unsuccessful.

The costs herein shall be in the cause.

It is so ordered.

Dated and delivered at Eldoret this 20th day of July 2012.

A.MSHILA

JUDGE

Coram: Before: Hon. A Mshila J

CC: Andrew

Counsel for the Applicants: Mr .Kiboi .

Ex-parte.

A.MSHILA

JUDGE