



REPUBLIC OF KENYA

High Court at Eldoret

Civil Suit 196 of 2007

JOSEPH KIPLAGAT KEITANY.....PLAINTIFF

VERSUS

KEVIN OKWARA T/A ALPHAX COLLEGE.....DEFENDANT

RULING

This is an application by the Defendant dated 29th day of January 2008. The Defendant's application is brought under Order 1 Rule 10 (2) & 22 of the Civil Procedure Rules and section 3A of the Civil Procedure Act, Cap 21. The applicant is asking for orders that the Honourable Attorney General and/or the Commissioner of Lands be enjoined in this suit as a party.

The application is premised on various grounds. I reproduce them herein below:

- 1. THAT the Attorney General and/or the Commissioner of Lands are necessary parties to this suit on behalf of the Forestry Department.**
- 2. THAT there is a dispute as to who has the right of user of the subject property.**
- 3. THAT the addition of the said party or parties is necessary for the court to effectively and completely adjudicate upon and settle all questions involved in the suit.**

The plaintiff in this suit claims to be in possession of ownership lease issued by the Commissioner of Lands to him and he wants the Defendant to be stopped from trespassing to the land. The Defendant/Applicant alleges too that he is licensed to use the land by the Department of Forestry. In his view, the land is Forest under the control and the management of the Department of Forestry.

He believes the above issues cannot be resolved without bringing in the Attorney General or the Commissioner of Lands in the suit. The Plaintiff vigorously opposes the application to have the Attorney General or the Commissioner of Land enjoined in the suit as a party.

Mr. Nyairo Counsel for the Defendant argues that once a Plaint is filed, the Court has powers to add a defendant or add a party whose presence is necessary to an application on its own motion. This powers, he reiterated, is inherent and unlimited.

It is the Defendant's case that he applied for and had been licensed by the Forestry department to use and occupy the suit land for 25 years from 11th July 2007. Exhibit "KO2". The land is part of Eldoret forest as per legal Notice No. 231 of 21st June 1966 signed by then Minister for Natural Resources, Hon.

C. M. B. Argwings Kodhek. The Defendant further argues that the Forest has not been degazetted and questions as to the validity of the Plaintiff's alleged title **ELDORET MUNICIPALITY BLOCK 10/464** can only be answered when all the necessary parties are enjoined in the suit. It is his assertion that Forest land is not available to the Commissioner of Lands for alienation. The learned counsel urged the court to allow the application as prayed.

On his part, the Plaintiff filed grounds of opposition to the application. He does not want the Attorney General to be brought into the suit. The grounds of opposition are as follows:-

- 1. That the application is frivolous and vexatious and abuse of the Court process.**
- 2. That the application is incompetent.**
- 3. That the suit land is registered in the Plaintiff's/Respondent's name and the Attorney General has no connection to the proceedings now before the Court.**
- 4. That it is the Plaintiff who elects the party to sue in proceedings.**
- 5. No relief has been sought against the Attorney General or the Commissioner of Lands by the Plaintiff in the Plaintiff.**

Mr. Muruka Counsel for the Respondent/Plaintiff in his opposition to the application submitted that the Plaintiff is the registered owner of the suit land having been issued a lease on 12th September 2005. He also argued that the title is valid and its authenticity can only be challenged under the Registered Land Act, Cap 300. He further argued that the suit land is distinct from the land licensed for the use and occupation of the Defendant.

Mr. Muruka reiterated that there is no need for the enjoinder of the Attorney General into the suit. His submissions are that the Plaintiff is seeking no reliefs from the Attorney General and that any orders issued by the Court will be against the Defendant. He concluded that the application has no merits and should be disallowed.

Having considered the pleadings and the exhibits rendered and taking into account the submissions of the Counsels, I believe this matter will be centered on whether the suit land is within the Eldoret Forest. The court will be better placed to make a fair determination with the involvement of the Department of Forest through the office of the Attorney General. The question whether the suit land is part of the forest and whether that portion where the suit land is located has been de-gazetted is a matter which the Department of Forests must avail the necessary answers.

It is my considered view that the presence of the Attorney General will only enrich the final determination of this case. The Attorney General represents the interests of the public. The Defendant has produced evidence and contends that the suit land is within a gazetted Forest, the Eldoret Forest. The Defendant claims that he operates a college in an area that forms part of the forest and that he was licensed by the Department of Forests is a weighty matter. There is no prejudice to the Plaintiff if the Attorney General is enjoined the suit. Indeed, it might help him to have his case disposed of more effectively and in a wholesome manner.

From the foregoing, I do hereby allow the Defendant's application dated 29th January 2008. Costs in the cause.

Dated and signed at Nairobi on this 21ST DAY OF AUGUST 2012.

M.K. Ibrahim
Judge

DATED AND Delivered at Eldoret on ThiS 31ST day Of OCTOBER 2012.

F. AZANGALALA

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Judge

In the presence of: Mr. Omusundi for Plaintiff

Ms Khaya for Defendant