



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Environmental & Land Case 49 of 2010**

**FRANCIS KIBARU KARANJA .....1<sup>ST</sup> PLAINTIFF**

**MARTHA WAIRIMU WAITHAKA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ISAAC ENTERPRISES LIMITED.....1<sup>ST</sup> DEFENDANT**

**JORETH LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Plaintiffs/Applicants herein have filed this Notice of Motion dated 17/10/2012 under *Order 8 Rule 3 (1) and Order 1 Rule 10* of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

The Plaintiffs/Applicants sought for orders that leave be granted to join *Thayu Kamau Mukugi, Chief Land Registrar and the Attorney General* as Defendants in the instant suit herein. They also sought to amend the plaint herein to reflect the additional parties aforesaid as per the *draft amended plaint* annexed herein.

The application is supported by the affidavit of Francis Kibaru Karanja and among one of the grounds that plaintiff have recently discovered that the suit property was transferred to one *Thayu Kamau Mukugi* the intended 3<sup>rd</sup> Defendant. That the said transfer was done from fraudulently with the collusion of the intended 4<sup>th</sup> Defendant. Therefore the intended amendment is necessary in assisting the court to determine the real issue in controversy between the parties.

The application was set down for hearing on 30/10/2012 in the presences of Mr. Maina for Plaintiffs/Applicants and absence of Defendant. Plaintiffs/Applicants have filed an affidavit of service to confirm that service was effected on 1<sup>st</sup> and 2<sup>nd</sup> Defendant on 12/11/2012 both Defendants were absent and application was therefore not opposed.

I have considered the argument advanced by Mr. Maina for the Plaintiffs/Applicants and the provisions of order 8 Rule 3 (1) and Order 1 Rule 10 of the Civil Procedure Rules and the grounds set out on the face of the application.

Order 8 Rule 3(1) states that **“the court may at any stage of the proceedings may allow any party to amend its pleadings.”** Order 1 Rule 10 also gives the court power to order **“any other person to be substituted or added if such order is necessary for the determination of the real matter in despite.”**

Considering the argument advanced by the Plaintiffs/Applicants and the grounds in support of this application, the court finds that the amendment is necessary in assisting the court to determine the real issue in controversy herein and it will not be prejudicial to the parties herein.

The court consequently allows the plaintiffs/Applicants application dated 17/10/2012.

Plaintiff is granted leave to *John Thayu Kamau Mukugi, Chief Land Registrar and the Attorney General* as Defendant herein. The plaintiffs to serve the requisite notices.

The plaint herein be amended to reflect the additional parties.

Cost in the cause.

Dated, signed and delivered this 15<sup>th</sup> day of November, 2012.

**L.N. GACHERU**

**JUDGE**

In the Presence of:

.....for the Applicant

.....for the Defendants

.....Court clerk