



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO.181 OF 2008**

**ELIZABETH NYAMBURA NJUGUNA**

**FRANCIS KAMAU NJUGUNA**

**[Suing as the administrators of the Estate of Njuguna Mwaura Mbogo  
(Deceased)].....PLAINTIFFS**

**VERSUS**

**JUMAA FARMERS COMPANY**

**LTD.....1<sup>ST</sup> DEFENDANT**

**JEREMIAH MUTURA**

**KINYANJUI.....2<sup>ND</sup> DEFENDANT**

**RUTH WANJIRU.....3<sup>RD</sup>**

**DEFENDANT**

**JONAH KIMARU.....4<sup>TH</sup>**

**DEFENDANT**

**JOSPHAT MBURU.....5<sup>TH</sup>**

**DEFENDANT**

**EZEKIEL**

**KIARIE.....6<sup>TH</sup>**

**DEFENDANT**

**ELIJAH MACHARIA.....7<sup>TH</sup>**

**DEFENDANT**

**RULING**

This ruling is in respect of an application brought by David Chege Mbugua (the applicant) pursuant to **Sections 1A, 1B and 3A of the Civil Procedure Act and Order 1 rules 8, 10(2) and 22 of the Civil Procedure Rules.**

In it, the applicant is seeking, in the main:

- i) that Leave be granted to him to bring the suit in a representative capacity on his own behalf and on

behalf of seventy (70) other persons

ii) that the applicant be joined in this suit as an interested party.

It is the applicant's contention that he and the other 70 persons have been living on the disputed property for over 30 years; that for the dispute to be decided with finality, for the court to be supplied with all the facts relevant for that determination and to avoid multiplicity of suits, it is only fair and just that the applicant and the 70 persons be joined in the suit. It is further averred that any order that may be issued by the court in this suit will directly affect the applicant and his group; that no prejudice will be occasioned by joining of the group; that all along the group assumed that the original plaintiff, the late Njuguna Mwaura Mbogo was pursuing their interest in the suit; that they pooled resources before moving the court.

The plaintiffs and the 8<sup>th</sup> defendant have vehemently opposed the application for the reason that it has been brought too late in the day; that some of the applicants are already in the matter as defendants while some are not even squatters on the suit property or are dead; that the applicant has not demonstrated that he has authority of those wishing to be joined in this suit to bring the application.

I have considered the rival arguments and hold the following view of the matter. The law on representative suits and joinder of parties may be briefly stated as follows:

i) in a representative suit, where there are numerous persons, one or more of such persons may sue or be sued if they have common interest in the suit;

ii) persons intending to be joined in a suit in a representative capacity as defendants must obtain leave of the court;

iii) where there are more defendants than one, any one or more of them may be authorized by the rest to appear, plead or act for the rest;

iv) the authority to act on behalf of the rest must be in writing signed by each person giving it and must be filed in court;

v) in joining a party, it must be demonstrated that his claim arises out of the same act or transaction as those in the suit.

Though the dispute in this matter has had a protracted and chequered history, suffice to state that this particular case was filed in September, 2008; that hearing of evidence of the parties started on 9<sup>th</sup> November, 2009. The plaintiffs and the 1<sup>st</sup> to the 7<sup>th</sup> defendants' cases have been closed, while the 8<sup>th</sup> defendant's case has been substantially heard and was infact scheduled to be heard on 30<sup>th</sup> November, 2010 but for the instant application.

The applicant David Chege Mbugua has brought this application on behalf of 70 other persons said to have a common interest in this suit. He seeks that he be joined as an interested party on his own behalf and on behalf of the 70. Under the provisions of **Order 1** of the **Civil Procedure Rules**, one can only seek and may only be joined in proceedings, either as defendant or a plaintiff.

But the fundamental question is whether the applicant has demonstrated that he and the seventy persons have an interest in the suit and that he has the authority of the seventy persons to present this application. The initial list annexed to the affidavit in support of the application constituted of 70 names. None of the persons named have signed against their names. However in the supplementary affidavit filed one month later there are 73 named persons, 31 of whom have not signed against their names, while it has been averred without being controverted that 11 in the list have died, 3 are already in the suit as defendants and 9 are beneficiaries of this court's orders and were therefore aware of the existence of this suit. It has been deposed that some of the persons named have no interest in the suit as they do not reside on the suit land.

Without proof that the applicant and his alleged group of 70 persons have common interest in the suit and without proof that those persons have given him authority and that they are indeed 70 and not 73 and that they are all alive and are not already participating in the proceedings, the application is not only mischievous but amounts to an abuse of the court process, particularly in view of the fact that it is being brought at this time when the hearing has advanced and is about to be concluded. There is no justification or explanation for the delay. It has been contended that the applicant has all along been attending the court in the company of some of the defendants. This assertion has not been rebutted. To grant this application, for the reasons stated, will be highly prejudicial to all the parties. It is therefore ordered dismissed. It is further ordered that costs be paid by David Chege Mbugua.

**Dated, Delivered and Signed at Nakuru this 11<sup>th</sup> day of March, 2011.**

**W. OUKO**

**JUDGE**