



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

(Coram: Ojwang, J.)

MISC. CIVIL APPLICATION NO. 277 OF 2009 (OS)

IN THE MATTER OF: COOTOW & ASSOCIATES, ADVOCATES

-AND-

**IN THE MATTER OF: ENFORCEMENT OF A PROFESSIONAL UNDERTAKING
ISSUED BY**

DANSON BUYA MUNGATANA t/a MUNGATANA & CO. ADVOCATES

-AND-

**IN THE MATTER OF: ORDER XXXVI, CIVIL PROCEDURE RULES & ORDER L, RULE
7, CIVIL PROCEDURE RULES**

-BETWEEN-

P.N. MASHRU

LTD.....APPLICANT/DEFENDANT

-AND-

**DANSON BUYA MUNGATANA t/a MUNGATANA & CO.
ADVOCATES.....PLAINTIFF/RESPONDENT**

RULING

The applicant moved the Court by Chamber Summons dated **17th September, 2009** and brought under s. 3A of the Civil Procedure Act (Cap. 21, Laws of Kenya) and Order I, Rule 14 of the Civil Procedure Rules.

The main prayer in the application is that:

“the Court be pleased to grant leave to the respondent to join *Masha Kai* as third party to this suit.”

In the event this prayer is granted, the applicant asks that the proposed third party be required to enter appearance within 21 days of being served.

The application rests on two grounds:

- (i) *the defendant claims contribution and/or liability against the intended third party;*
- (ii) *the intended third party is solely to blame for the injury in respect of which the plaintiff is claiming.*

The evidentiary basis of the application is in the supporting affidavit of **Danson Buya Mungatana** sworn on **17th September, 2009**. the deponent deposes that he works as an Advocate with the plaintiff firm; that delay in processing the title deed is attributable solely to the proposed third party; that the proposed third party is a party to the relevant transaction, within the knowledge and consent of the applicant; that **Masha Kai** is the intended third party and it is *“only fair that he be joined in this suit, to explain the circumstances and occurrence of ... delay ...”*; that it is fair that **Masha Kai** be joined in the suit, to enable the Court to *“make a fair and final judgment in the presence of all the parties concerned.”*

When this matter came up before me on **17th June, 2010** learned counsel, **Mr. Wanyonyi** represented the applicant, while learned counsel, **Mr. Njoroge** represented the respondent; and on that occasion, directions were given for a hearing. Subsequently (on **24th June, 2010**), the parties took **26th July, 2010** as hearing date; but on that occasion, the applicant was represented by **Mr. Weloba**, holding brief for **Mr. Wanyonyi**, while the respondent was unrepresented. I gave the direction, on that occasion, that a Ruling would be given on the basis of affidavit evidence.

Now on the basis of the affidavit on file, which I have accorded due consideration, I will make Orders as follows:

- (1) I hereby grant leave to the defendant/applicant to join *Masha Kai* as third party to the suit.**
- (2) The said third party shall enter appearance within 21 days of being served with these Orders.**
- (3) Costs shall be in the cause.**

DATED and DELIVERED at MOMBASA this 20th day of May, 2011.

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J. B. OJWANG

JUDGE