



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 228 OF 2010

ISAIAH KINYUA MUTURIAPLAINTIFF

VERSUS

**NENO SACCO SOCIETY LTD
MR. MANGAADEFENDANTS**

R U L I N G

This is an application by way of Notice of Motion dated 25th August 2010 under the provisions of Sections 1A, 1B, 3A and 80 of the Civil Procedure Act, Order 1, Rule 10 (2) and Order XLIV, Rule 1 of the Civil Procedure Rules. It is made by one Niceta Muthoni Njagi who seeks inter alia, the following orders:-

- *That this Honourable court be pleased to join Niceta Muthoni Njagi to this suit as a necessary party.*
- *That this Honourable Court be pleased to review and set aside ex-debito justitiae, its Order made on the 13th day of July 2010 and extended on the 26th day of July, 2010.*

Upon deliberation and consultations, it became clear that there was no objection to the joinder of the said Niceta Muthoni Njagi as a party in this suit.

Upon consideration of all the submissions of Counsel the pleadings, affidavits and all material before me, I do agree that Niceta Muthoni Njagi ought to be made a party to enable her present her application and in particular Prayer 3 of the Application.

At the same time, it has become clear and certain that another party not yet joined called Neno Courier Services Limited is the registered owner of the suit premises, MSA/Block XVI/III/MI along Kenyatta Avenue. As a result I do find that the said company is a necessary party and no proceedings can be litigated and in particular this suit touching on the said property without the participation of the said owner and being made a party in the suit. It is the only way that the court can effectually and completely adjudicate upon and settle all questions invoked in the suit.

In exercise of this court's power and discretion under the provision of Order 1 Rule 10 (2) and (4). I do

hereby order as follows:-

- 1. That Niceta Muthoni Njagi be added in the suit as the 3rd Defendant.**
- 2. That Neno Courier Services Limited be added as the 4th Defendant.**

In view of the provisions of Order 1 Rule 10 (4) I am of the view that the plaint must be amended to reflect the addition and to determine whether there is any cause/s of action against the said parties and if the ex-parte orders granted in any way affects them and if it could possibly have been granted if they were parties from the beginning and/or if it should be continued pending the inter parties hearing of the application for injunction or not.

The Plaint as amended shall be filed and served within 14 days. The Defendants shall file and serve their respective Amended Defences and Defences within 14 days of service.

The Status Quo shall be maintained pending the inter parties hearing of prayer 3 herein.

In the meantime, the Defendants company is at liberty to file and serve its Replying Affidavit within 14 days hereof. Costs shall be in the application. New date at Registry on priority basis.

Dated and delivered at Mombasa this 18th day of October 2010.

M.K. IBRAHIM

J U D G E

Coram

Ibrahim, J
Court clerk – Kazungu
Mr. Odhiambo for the Applicant
Mr. Kimani for the plaintiff/Respondent
Mr. Kaburu for Defendant
Ruling delivered in their presence.

Ibrahim, J.

FURTHER ORDER

Further hearing shall be on 8.12.2010. Status quo shall be maintained. The plaintiff shall give a written undertaking within the next 7 days to pay any damages expenses and/or costs which shall or may be incurred by the defendants jointly and/or severally as a result of the grant of the Exparte Interim injunction Orders on 8/07/10 and renewed/extended from time to time, in the event that he shall be unsuccessful in the applications to set aside/review and/or injunction application itself.

Ibrahim, J.