



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
CIVIL CASE NO. 114 OF 2009

KENYA ANTI-CORRUPTION COMMISSION PLAINTIFF

-VERSUS-

PETER OLOO ARINGO & 2 OTHERS.....DEFENDANTS

RULING

1. The application before court is a chamber summons dated 26th April, 2010 pursuant to Order 1 Rule 10(2) and Rule 22 of the Civil Procedures Rules. The same seeks to have the 2nd defendant's name struck out from the suit and the case against it dismissed all together. It also seeks for costs of the application.
2. The application is supported by the grounds on the face of the application and a supporting affidavit of **P. K. KIPROP** dated the 26th April, 2010. The 2nd defendant states that it is a stranger to the suit as its interest was limited only to the extent that it procured a charge over property in dispute **L.R. NO. KISUMU/MUNICIPALITY/BLOCK 7/411** and that before advancing a loan to the 1st defendant it took all necessary steps and ascertained that the 1st defendant was the registered lease-hold owner of the same.
3. The plaintiff objected to the application by filing grounds of opposition dated the 22nd of July, 2010. The plaintiff contended that the affidavit in support of the application was incurably defective, frivolous and vexatious. Further that the 2nd defendant is a necessary party to the suit. The plaintiff also contended that the charge created by the 2nd defendant over the suit property was invalid, and it has accordingly sought for orders to that effect and as such the 2nd defendant ought to be a party to the suit in the circumstances.
4. The issue for consideration before court is whether there is need to sustain the 2nd defendant for purposes of determining the real issues in controversy before court.
5. The plaintiff seeks as part of its prayers a declaration that the issuance of a lease by the 4th defendant to the first defendant over the suit property was null and void. It also seeks a declaration that any subsequent charge over the property or transfer was null and void and ineffectual to confer a good

title upon the third defendant.

6. The defendant’s have all denied the allegations by the plaintiff. In particular they assert that the 1st defendant obtained a good title. The 2nd defendant denies the plaintiff’s claim that it was aware and/or constructively aware of the Kenya Railway Corporation interest in the suit premises and that it had no obligation to search any register or document to ascertain the Corporation’s interest. It also denied that the 1st defendant’s registration was illegal, null and void **abnatio**. It is notable that in the current application and the supporting affidavit, the 2nd defendant failed to indicate that it sold the property in question in a public auction to the 3rd defendant.

7. It is settled law that striking out a pleading ought to be done in the clearest of circumstances. The 2nd defendant was a charger and due to the 1st defendant’s default in repaying the loan it had advanced to him, it sold the property to the 3rd defendant. Who is the current registered owner. Order 1 Rule 3 of the Civil Procedure Rules states,

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common questions of law or fact would arise.”

8. In order for the court to determine the real controversy between the plaintiff and the defendants and in order to determine issues of fact and law raised in both the plaint and the defence and in particular the 2nd defendant’s defence, the court finds that the 2nd defendant is a necessary party to this suit. For reasons above stated, the application is therefore dismissed with costs.

DATED AND DELIVERED THIS 1st OCTOBER, 2010.

ALI-ARONI

JUDGE

In the presence of:

..... **present for defendant/applicant**

..... **present for plaintiff/respondents**