



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**  
**CIVIL SUIT (ELC) NO.417 OF 2010**

**GEORGE NDEGWA MWANGI.....PLAINTIFF**

**VERSUS**

**SAMSON KEENGU NYAMWEYA.....DEFENDANT**

**RULING**

1. A preliminary objection has been raised to the plaintiff's notice of motion dated 9<sup>th</sup> September, 2010 on the grounds that the suit is incompetent and incurably defective since the suit property LR No.10261/3 is jointly owned by the plaintiff and one Salome Njeri Mwangi as joint tenants. It is submitted that the plaintiff cannot bring these proceedings excluding Salome Njeri Mwangi.
2. Counsel for the defendant relied on Halsbury's Laws of England Fourth Edition Vol. 39(2) at paragraph 193 – 194 wherein it is stated that each joint tenant is seized of the whole, and that in actions regarding the joint estate, one joint tenant may not sue or be used without joining the others. Counsel therefore urged the court to find the plaintiff's suit and application incurably defective, strike out the entire suit and award costs to the defendant.
3. For the plaintiff, it is contended that the non-joinder or misjoinder of a party to the suit cannot defeat the legality of the suit. Mr. Ngome who appeared for the plaintiff distinguished the authority cited as relating to a dispute regarding the land jointly owned, whilst the dispute before the court is not a dispute between the joint owners but is a boundary dispute between the joint owners and separate parties.
4. Mr. Ngome maintained that what was being raised was only a technical objection not a preliminary objection. He referred the court to Order VI Rule 12 of the Civil Procedure Rules which excludes technical objections. He maintained that Order I Rule 8(1) of the Civil Procedure Rules provides for who may sue. In response Mr. Amolo for the defendant submitted that Order I Rule 8 of the Civil Procedure Rules is not applicable as this case does not involve numerous persons with an interest, but is dealing with substantive joint owners.
5. I have considered the preliminary objection which has been raised. I find that although the plaintiff has averred in paragraph 3 of the plaint that he is the registered owner of LR No.10261/5

Annexure GNM -1 to the plaintiff's affidavit sworn in support of Notice of Motion dated 9<sup>th</sup> September, 2010 shows that LR 10261/5 is owned by the plaintiff and one Salome Njeri Mwangi as joint tenants. Thus the plaintiff's averment in paragraph 3 is misleading. I concur with the defence submission that the plaintiff's suit and application are defective as the plaintiff being only a joint owner of LR 10261/5 has no authority to bring a suit in respect to that property without including his co-owner Salome Njeri Mwangi. Nevertheless, I find that this is a defect which can be easily cured by way of an amendment. Moreover, the notice of preliminary objection relates to LR No.10261/3 which is not owned by the defendant and to that extent the preliminary objection is also defective.

6. In the circumstances, I direct that the plaintiff shall make an appropriate application for amendment of the plaint and notice of motion within 21 days from the date hereof.

Orders accordingly.

**Dated and delivered this 25<sup>th</sup> day of November, 2010**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -  
Ngome for the plaintiff  
Advocate for the defendant absent  
B. Kosgei - Court clerk