



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT MACHAKOS
CIVIL CASE 165 OF 2008

WESTLINK DEVELOPER LIMITED PLAINTIFF/RESPONDENT

VERSUS

JOSHUA NZIVE MULWA 1ST DEFENDANT/APPLICANT

CHARLES M MATHEKA 2ND DEFENDANT/APPLICANT

RUCINA M MBEVI 3RD DEFENDANT/APPLICANT

CATHERINE MBALUTO 4TH DEFENDANT/APPLICANT

RULING

1. The Application before me is dated 29/1/2009 and the same is premised on Order 1 Rules 10 (2) and (4) of the Civil Procedure Rules and Section 3A and Section 63 of the Civil Procedure Rules. The Applicant Joshua Nzive Mulwa seeks orders that Tianyi Ltd and Savings and Loan (K) Ltd be added and/or joined as Defendants to the suit herein.
2. The reasons for seeking the joinder of the named parties is that from the grounds on the face of the Application and from the Supporting Affidavit of the Applicant, the land in dispute i.e. L.R. No.12867/23 was originally registered in the names of Kenya Commercial Bank Ltd, the 1st Defendant. That this court had consolidated H.C.C.C 130/2008 and H.C.C.C 165/2008 and subsequently it transpired that on 11/12/2008 the suit land was sold and transferred to Tianyi Ltd who in turn charged it to Savings & Loan (K) Ltd and therefore it was necessary to join those parties in the consolidated suit.
3. I have taken into account the responses by other parties and to my mind and as was stated by Nambuye J in **Kingori vs Chege & 3 Others (2002) KLR 243** the principles to guide a court on the issue of joinder of a party are that;
 - i. he must be a necessary party;
 - ii. he must be a proper party;
 - iii. in the case of a defendant there must be a relief flowing from that defendant to the Plaintiff;
 - iv. the ultimate order or decree cannot be enforced without his presence in the matter;

v. his presence is necessary to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit.

4. The advocates for the parties save the advocate for the 1st Defendant agree that the orders sought should be granted. The advocate for the 1st Defendant raises only one issue worth consideration; that Savings and Loan is not a party and no amendment has been made to include a cause of action against it. That is so and indeed only upon its joinder can an amendment be sought and the cause of action against it is established.

5. It is instructive to note that the transfer to Tianyi Ltd was made while the two suits that I consolidated on 16/12/2008 were still live and the ownership of the suit land was in dispute. It is necessary that all parties with an interest in the land be joined in one suit and all those interests determined at the same time and not in separate proceedings as the advocate for the 1st Defendant seemed to suggest.

6. Further, applying the principles set out above, it seems to me that this court can only make a fair determination of the matter and reach a fair decision if all parties are before it including the present registered proprietor and the chargor.

7. In the end the Application dated 29/1/2009 has merit and is allowed as prayed. Costs shall be in the cause.

8. Orders accordingly.

Dated and delivered at Machakos this 27th day of **May** 2009.

ISAAC LENAOLA

JUDGE

In presence of: **Mr Mulwa h/b for Miss Muteti for Respondents**

Mr Kimeu h/b for Mr Mbindyo for Plaintiff

ISAAC LENAOLA

JUDGE