

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 96 of 2008

SOLOMON GICHURU MAUGO
PLAINTIFF

VERSUS

JOSEPH MWIRIGI M'ITHIRI 1ST DEFENDANT

THE KENYA COMMERCIAL BANK – MERU .. 2ND DEFENDANT

RULING

The plaintiff filed this case against the defendant seeking an order of declaration that he holds a portion of 6 acres in land parcel No. KIBIRICHIA/73 in adverse possession. Further, that the court do declare that the defendant since 1992 has been holding a portion of 6 acres out of that land in trust for the plaintiff. The defendant filed an amendment defence on 29/10/08. In paragraph 3 of that defence, the defendant averred that he had charged his property with Kenya Commercial Bank which had declined to release the title document despite him having made payment of Kshs. 156,000/=. That paragraph provoked the plaintiff to file the application dated 23/4/2009 which is the subject of this ruling. The plaintiff seeks to be allowed to amend the plaint so as to include a co-defendant, that is Kenya Commercial Bank, Meru. The plaintiff bases his application on the averments contained in the defendant's defence to the effect that the bank had refused to release the subject title. The plaintiff deponed that it is necessary to make the bank a party to unveil the truth of the defendant's dealing with the bank. The application was opposed by the defendant. In his replying affidavit, the defendant deponed that the joining of the bank as a party would result in the delay in the determination of this suit. He further stated that he has sued the bank in another suit namely, HCC No. 100 of 1992 which is pending determination before High Court at Meru. He further deponed that joining the bank would therefore lead to a multiplicity of suits. The plaintiff has a right and the prerogative to choose and implead in a suit as the defendant a person whom he seeks relief against. The object of Order 1 Rule 10(2) of the Civil Procedure Rules is to allowing the plaintiff to bring other persons as parties to the suit is to assist the court to have in its presence the parties to the dispute and this would avoid the inconvenience and the multiplicity of proceedings. It is however necessary for any party who wish to be joined as the defendant that he should have a legal interest in the subject matter. See Mula 'The Code of Civil Procedure' 16th Edition. The defendant cannot be heard to oppose the plaintiff's application because it is the defendant who introduced the bank into this proceedings by stating in his defence that the bank has refused to release the title documents of the suit property. Bearing in mind that the plaintiff's claim is one of adverse possession to the suit property, it is essential for the bank be brought into this action to ensure that if the plaintiff is successful in his claim, an order of release of the title can be made against the bank. Conversely, if the bank has an interest in that property, it will have an opportunity to bring it before court. I am therefore of the view that the plaintiffs application is merited. I grant the following orders:-

1. *That the plaintiff is hereby granted leave to amend his plaint as per the annexed draft to the application dated 23/4/2009. Such amendment is to be filed and served upon the defendant and the new party within 14 days from this date hereof.*
2. *That the court does hereby order that fresh summons do issue to be served upon Kenya*

Commercial Bank.

3. *The costs of the application dated 23/4/2009 shall be in the cause.*

Dated and delivered at Meru this 25th day of September 2009.

MARY KASANGO

JUDGE