



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 419 of 2008

IRENE NADUPOI GITAU (Suing on behalf of herself and of all the 114

Stakeholders of parcel Number L.R. No.8390 Block II Kamiti/Kiambu) PLAINTIFF

VERSUS

STEPHEN KAMAU.....1ST DEFENDANT

HANNANH WANJIRU KAMAU.....2ND DEFEDNANT

RULING

1. The Application before court is a Chamber Summons dated 9th June, 2009 brought under the provisions of Order I Rules 10A, 12 & 13, Order VI A Rules 3, 7 and 8 of the Civil procedure Rules. The said application is supported by the affidavit of the Plaintiff/Applicant *Irene Nadupoi Gitau* & on the grounds on the face of the application.

2. The application seeks to amend the plaint by including the Attorney General as a 3rd Defendant & filing of an authority letter.

It also seeks to amend the Chamber Summons dated 20th April, 2009 to be inconformity with the title on the plaint.

3. The 1st and 2nd Defendant did not oppose the application. The Intended Third Defendant filed a Memorandum of Appearance & a Notice Preliminary Objection On the 13th of July, 2009. The intended 3rd party objected to the application in that the said application is defective, and that the pleadings do not demonstrate any cause of action against the Attorney General.

4. The issue for determination before court is whether or not to grant leave to the Applicant to amend the plaint, the Chamber Summons dated 20th April, 2009 and to file the authority letter.

The court directed the Preliminary Objection to be argued with the application.

5. The Plaintiff/Applicant contends that for the Court to determine the real issues before it, it is necessary for the 3rd Party to be enjoined to the suit, further that there is need to amend the Chamber Summons dated 20th April, 2009 to be in line with the heading on the plaint .

The Intended 3 Party contends that no cause of action has been established as against it. That the

grievances complained of as against the chief are criminal in nature, and that any other claim as against Intended Third Party ought to be brought to court by way of Judicial Review. It also argues that it cannot be cited for contempt as it was not a party to the suit when the order was made.

7. Under Order VIA Rules 3 & 5 the court may at any stage allow amendment to a pleading in order to determine the real issues before it. The Plaintiff/Applicant states that it is necessary to enjoin the Attorney General in order to have the real issues determined. It is notable that there is an allegation of the area chief's involvement in the eviction being alleged.

It is, the right of a litigant, to pursue his/her claim fully. A litigant therefore ought not to be denied an opportunity to enjoin a party to the suit. In my considered view, as there is an allegation against the area chief, it would only be fair that the Intended 3rd Party be enjoined, to enable the court determine the real issues before it. I am therefore inclined to grant prayer 1 of the Chamber Summons as relates to the amendment of the plaint subject to the requirements of S.13 the Government Proceedings Act Chapter 40 of the Laws of Kenya.

8. Order 1 rule Order 12 (1) & (2) allow where there are more than one plaintiff for the other Plaintiffs to authorize any one or more of them to appear, plead or act for them. The authority is to be in writing. The Applicants contend that the authority on record was not signed by all the other Plaintiffs. Although the operative word in rule 12 (2) is "**shall**", in my view non-compliance does not render the suit defective. This is a procedural defective that can be rectified. It has been severally held before that Rules of Procedures are hand maiden of justice and not mistress of justice. In the case of **MICROSOFT CORPORATION LTD & ANOTHER vs. MITSUMI COMPUTER GARAGE** (2001) KLR 470 Ringera J (as he then was) said in alia:-

"Where it is evidence that the Plaintiff has attempted to comply with the rule requiring verification of a plaint but has fallen short of the prescribed standards, it would be to elevate form and procedure to a fetish to strike out the suit.

Deviation from lapses of form & procedure which do not go to the jurisdiction of the court to prejudice the adverse party in any fundamental respect ought not to be treated to as nullifying the legal instrument thus affected. In those instances the court should rise to its higher calling to do justice by saving the proceedings in issue.

Rules of procedure are the hand of maiden of justice and not mistresses of justice. They should not be elevated to a fetish. That is to facilitate the administration of justice in a fair, orderly and predictable manner not to fetter or choke it."

Guided by the above authority I hereby grant leave for the amended the authority letter to be filed

9. In the interest of Justice and fair play I will also allow prayer 3 of the application.

10. I make no order as to costs.

Dated and delivered at Nairobi this 27th October, 2009.

ALI- ARONI

JUDGE