



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MACHAKOS**

**Civil Case 9 of 2008**

**B2 YATTA RANCHING CO-OPERATIVE SOCIETY ..... PLAINTIFF/APPLICANT**

**VERSUS**

**1. COUNTY COUNCIL OF KITUI**

**2. CEDRIC SAMMY MWANZIA**

**3. MUTHENGI MULAMBAYA**

**4. MUSYOKI SYUKI**

**5. NGUU NDONGA**

**6. BENSON NGUTHU**

**7. FESTUS MUSUMBA KAKYA ..... DEFENDANTS**

**RULING**

1. The Application dated 6/3/2008, is premised on Order 1 Rule 3 and 10 of the Civil Procedures and the Applicants seek orders that they be joined as Defendants to this suit. In the Supporting Affidavit of Cedric Sammy Mwanzia sworn on 5/3/2008, it is deponed that:

i. all the Applicants reside on land parcel number L.R. No. Katoteni 12010 situated as Kitui Yatta B2 area of Kitui District.

ii. all the Applicants are officials of Katoteni Nguamuka Farmers Environmental Conservation, a Community Based Organization duly registered as such which caters for the interests and welfare of residents of Katoteni who occupy the suit land.

iii. all the Applicants, their families and others who number about 2000 persons would be greatly prejudiced if any orders adverse to them are made in this suit.

iv. the Plaintiff's representatives have failed to disclose the above facts in their pleadings while they knew the history of the land and the Applicants' interest in it.

v. the Plaintiff has no superior claim to that of the Applicants and that in **H.C.C.C. 66/2007 (O.S)** which was later withdrawn, the Plaintiff was made aware of the Applicants' claim to the land and failure to enjoin the Applicants in this suit is deliberate and calculated to emasculate all issues thereby arising including intended adjudication of the disputed land.

2. The response by the Plaintiff is contained in an affidavit sworn on 10/3/2008 in which James Masila Simba depones that the Applicants are strangers to the dispute between the Plaintiff and Defendant and they have no locus standi in it. Further that the dispute herein being a simple one to determine whether there is a lessee-lessor relationship between the Plaintiff and the Defendant, that therefore the Applicants have no place in such a dispute and should be shut out of the temple of justice.

3. Advocates for the parties merely reproduced the contents of their clients' opposing affidavits but of interest is the fact that the 1<sup>st</sup> Defendant, County Council of Kitui does not oppose the joinder of the Applicants in the suit.

4. To my mind, the matter before me is very simple and I intend to spend little time on it. I say so with respect to the Plaintiff because Order 1 Rules 3 and 10 (2) of the Civil Procedure Rules provide as follows:-

**“Order 1 Rule 3. 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 transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”**

**“Order 1 Rule 10 (2). The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”**

5. In my understanding, where common issues of law or fact arise and where it is necessary to enable this court to effectually and completely adjudicate and settle all questions involved in a suit, then a party may be added to a suit. In this case, I have read the Plaintiff's claim and in it, the Plaintiff claims to be the holder of a leasehold interest over the disputed parcel of land. It seeks a declaration that **“it is the sole proprietor of the property contained in and known as L.R. No. 12010...within County Council of Kitui. It further seeks an injunction to restrain the County Council from inter-alia subdividing, allocating and/or in any manner whatsoever interfering with the parcels of land known as L.R. No. 12010 and L.R. 11802 to the detriment of the plaintiff.”**

6. In **H.C.C.C. 66/2007 (Machakos)** the present Applicants sought a declaration that they had become entitled to the suit land by adverse possession. On 3/8/2007, the suit was marked as withdrawn under Order 24 Rule 2 (2) of the Civil Procedure Rules for non-compliance with Order 36 Rule 2 of the Civil Procedure Rules. The Applicants however maintain their claim of entitlement to the suit land hence the present Application. I have seen correspondence attached to the Supporting Affidavit of Cedric Sammy Wambua and in them, the District Land Adjudication and Settlement Officer, Kitui states that there are a number of people who occupy the suit land apart from the attempts by the Plaintiff to renew its leasehold interest with the County Council. One of the parties with a claim to the land is noted as Katoteni Nguamuka Farmers Environmental Conservation which all the Applicants claim is their flagship.

7. Clearly with such a scenario obtaining the issues of law and fact that would arise during the hearing would invariably affect the Applicants and to shut them out of this suit would most likely occasion a separate suit as was the case when **H.C.C.C. 66/2007 (O.S)** was filed. It would be prudent that all issues between all the persons claiming either a leasehold interest or an absolute ownership over L.R. No. 12010 Katoteni be determined in one suit.

8. In the event and without belabouring the point, the Applicants have made out a good case for their being joined in this suit and since the 1<sup>st</sup> Defendant has no objection to them being joined as co-defendants, I will allow the Application dated 6/3/2008.

9. Costs will be in the cause.

10. Orders accordingly.

Dated and delivered at Machakos this 14<sup>th</sup> day of April 2008.

**ISAAC LENAOLA**

**JUDGE**