



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA  
AT MACHAKOS

Civil Case 9 of 2008

**B2 YATTA RANCHING CO-OPERATIVE SOCIETY LTD.....PLAINTIFF**

**VERSUS**

**COUNTY COUNCIL OF KITUI.....1<sup>ST</sup> DEFENDANT**

**CEDRIC S. MWANZIA.....2<sup>ND</sup> DEFENDANT**

**MUTHENGI MULAMBAYA.....<sup>RD</sup> DEFENDANT**

**MUSYOKISYUKI.....4<sup>TH</sup> DEFENDANT**

**NGUU NDONGAI.....5<sup>TH</sup> DEFENDANT**

**BENSON NGUTHU.....:6<sup>TH</sup> DEFENDANT**

**FESTUS MUSUMBA. KAKYA.....7<sup>TH</sup> DEFENDANT**

**RULING**

1. The Application dated 16.6.2008 seeks orders that;

*“i. That notice of this application be dispensed with and this application be heard ex-parte in the first instance.*

*ii. That Joseph Ndeli Musyoka, Pius Kakono Kau, Geoffrey Kasinga Sambu, , Beatrice Matheka and Munini Kithami be joined or added to this suit as the 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> 11<sup>th</sup> and 12<sup>th</sup> defendants respectively.*

*iii. That the costs of this application be provided for.”*

2. I have read the Supporting Affidavit of Pius Kakono Kau, seen the annexures thereto and also perused the Replying Affidavit of George Wambua, Clerk to the 1<sup>st</sup> Defendant Council as well as that of James Masila Simba. I have also read my Ruling delivered on 14.4.2008 whereat I allowed joinder of a

number of persons as Defendants in this suit. In doing so I stated as follows:

***“It would be prudent that all issues between all persons claiming either a leasehold interest or an absolute ownership over L.R.No. 12010 Katoteni be determined in one suit.”***

3. In the present Application, the Applicants have relied on the following grounds:

***“(a) That the intended defendants are all residents of the land that is the subject of the suit herein between the Plaintiff and the current Defendants.***

***b) That the intended Defendant are directly affected by the matters the subject of this suit and any orders made in this suit will directly affect them and will ultimately be binding upon them.***

***c) That the intended Defendants are necessary parties and their presence in the suit will enable the court to effectively and completely adjudicate upon and settle all the issues or questions involved.***

***d) That the presence of the intended Defendants in this suit will not prejudice the Plaintiff in any way.”***

4. From submissions made before me, the only serious issue raised in opposition to the Application is that the Applicants are also parties to **HCCC 76/2003** and that if they are joined in the present suit, they will only delay its finalization or that they will invoke section 6 of the Civil Procedure Act and stay the present suit.

5. My view remains the same as it was in the prior Ruling; let all parties that have any claim over the suit land be joined so that all those varying claims can be determined at once. Matters regarding **HCCC 76/2003** will be dealt with in due course but I see no reason to deny the Application which is allowed as prayed.

6. I decline to make any order as to costs.

7. Orders accordingly.

Dated and delivered at Machakos this **16<sup>th</sup>** day of **October 2008**.

**Isaac Lenaola**

**Judge**

In the presence of: Mr. Macharia for 2<sup>nd</sup> – 8<sup>th</sup> Defendant

Mr.Makau h/b for Mr. Kalili for 1<sup>st</sup> Defendant

**Isaac Lenaola**

**Judge**