



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

**Civil Case 1026 of 2005**

**PETER MAINA KINGORI .....1<sup>ST</sup> PLAINTIFF**

**CHARLES MWANGI KINGORI.....2<sup>ND</sup>  
PLAINTIFF**

**VERSUS**

**CITY COUNCIL OF NAIROBI.....DEFENDANT**

**RULING**

The plaintiffs filed this suit against the defendant seeking judgment for:

- (a) Damages
- (b) An injunction to compel the defendant to deliver back to the plaintiffs all iron sheets and poles seized from the suit premises LR NO.24899. They also sought costs of the suit.

On 5<sup>th</sup> September 2005 the applicant brought this application by way of Chamber Summons seeking orders that she be joined as a second defendant. The application is based on the ground that she is the registered owner of the suit land LR NO. 209/12757 to which the applicant's claim has another title namely LR NO.209/24899 and LR NO.209/24900 that the applicant has an interest in the suit land, that the applicants presence as a second defendant is necessary to enable the court effectively and completely adjudicate upon and determine all the real issues raised in this matter. The application is opposed by the plaintiffs who have filed a replying affidavit.

Mr. Kihonge counsel for the plaintiffs submits that a party has a right to chose his adversary and cannot be compelled to sue a party against his will. The dispute in this suit is essentially between the plaintiffs and the defendant, the Nairobi City Council to return materials it had carried away. Further counsel argues that if the proposed 2<sup>nd</sup> defendant is enjoined to the suit, she will be a defendant with conflicting interest.

I agree with counsel for the plaintiffs that one cannot be compelled to sue a party which he does not intend to sue. The proposed 2<sup>nd</sup> defendant if she feels that the outcome of the present suit will affect her interest in the suit property if any, she would probably apply to be joined as an Interested Party.

For the above reasons, I agree with counsel for the plaintiffs that the proposed second defendants application lacks in merit and the same is dismissed with costs.

Dated and delivered at Nairobi this 29<sup>th</sup> day of March 2006.

**J.L.A. OSIEMO**

**JUDGE**