

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE 42 OF 2000

JOSHUA C. CHERUTICH.....1ST PLAINTIFF/RESPONDENT

MARY C. LOPOKOIYIT.....2ND PLAINTIFF/RESPONDENT

VERSUS

DANIEL K. KIRUI.....1ST DEFENDANT/RESPONDENT

JOSEPH KITTONY.....2ND DEFENDANT/RESPONDENT

AND

DR WENWA AKINYI ODINGA.....APPLICANT

RULING

This is an application made by Dr Wenwa Akinyi Odinga (*hereinafter referred to as the applicant*) purportedly under the provisions of **Order 1 rule 3, 10, 13 and 22 of the Civil Procedure Rules** and Section 3A of the Civil Procedure Rules seeking the orders of this court that she be joined as an interested party to this suit and thereafter be made to be the 3rd defendant. The applicant has in the alternative sought the order of this court consolidating this suit with **Nakuru CMCCC No. 217 of 2000**. The grounds in support of the application are that the applicant purchased a plot of land measuring $\frac{1}{2}$ acre marked C in the parcel of land known as **Nakuru Municipality/Block 12/140** which is the suit land in this suit (*hereinafter referred to as the suit land*). The applicant is apprehensive that should this case proceed without her being made a party, orders might be issued which would be adverse to her interest on the suit land. The application is supported by the annexed affidavit of the applicant Dr. Wenwa Akinyi Odinga.

Without the leave of this court, the applicant filed her list of documents and also what she termed as “*statement of issues for the interested party*”. The applicant filed two further affidavits dated the 14th of July 2005 in further support of the application. The 1st plaintiff, Joshua Cherutich, filed a replying affidavit opposing the application. Likewise the 1st defendant Daniel Kirui and the 2nd defendant Joseph Kitony filed replying affidavits opposing the application filed by the applicant.

At the hearing of the application, I heard submissions made by Mrs Omwenyo on behalf of the applicant, Mr Kimatta on behalf of the plaintiff, Mr Gatumu on behalf of the 1st defendant and Mrs Oduor on behalf of the 2nd defendant. Having carefully read the pleadings filed by the parties to this application and having considered the arguments made before me, the issues for determination are two fold; Is the applicant properly before this court and has the applicant made a case to enable this court grant her prayer that she should be enjoined as a party to this suit? Certain facts are not in dispute. It is not disputed that the applicant has filed a suit against the defendants in this case before the Chief Magistrate’s Court, Nakuru. Later, the plaintiffs were joined as the third parties in the said case. The suit is **Nakuru CMCCC No. 217 of 2000**. The said suit is still pending hearing and determination before the Chief Magistrate’s Court. In the said suit the applicant is claiming $\frac{1}{2}$ an acre being part of parcel number **Nakuru Municipality/Block 12/140**. From her pleadings, the applicant is claiming a distinct portion of the said parcel of land which she has identified as Plot No. C. In the current suit the plaintiffs are also claiming $\frac{1}{2}$ acre from parcel number **Nakuru Municipality/Block 12/140**. The said $\frac{1}{2}$ an acre is not Plot No. C. From the evidence so far adduced by the plaintiffs, they have already erected a residential house on their $\frac{1}{2}$ an acre portion. The $\frac{1}{2}$ an acre does not at all touch the $\frac{1}{2}$ an acre which the applicant is claiming.

The applicant has sought to be enjoined to this suit as the 3rd defendant (or an interested party). I have carefully read the provisions of **Order I of the Civil Procedure Rules**. The said rules do not allow a party to be enjoined to an already existing suit especially where the joining of such party to the suit may cause confusion in the determination of the matters in controversy between the existing parties. In the instant case this court has already heard and concluded the plaintiff's case. The plaintiffs' have closed their case. This court is waiting to hear the case for the defence. If this court were to allow the applicant's application, it would create confusion and lack of clarity in the court's proceedings. As earlier stated, it would not assist in the determination of the dispute which has already been partly heard by this court. The applicant's fear that this court may issue orders adverse to her once this case has been determined, is far fetched to say the least. The plaintiffs are seeking orders to be awarded a specific portion of land which does not include the portion of land which the applicant is claiming in her suit. No orders can therefore be issued by this court that would affect the parcel of land claimed by the applicant. Even if this court were to issue such orders (which is very unlikely), the applicant still has a remedy to be refunded the purchase considered or be paid damages by the defendants in the suit which she has filed.

In the circumstances of this case, it would therefore be improper to enjoin the applicant to this suit, particularly at the stage which these proceedings has reached. Her presence in this suit will not aid or assist the court in the just determination of the dispute between the plaintiffs and the defendants in this suit. The proper recourse by the applicant is to have her case listed for hearing before the Chief Magistrate's Court so that the same may be expeditiously heard and determined. There is no reason why a suit which was filed in the year 2000 by the applicant has not been heard and determined as at the date the application was filed. The ball is in the applicant's court.

For the reasons stated above, the application filed by the applicant lacks merit and the same is dismissed with costs to the respondents.

DATED at NAKURU this 3rd day of October 2005.

L. KIMARU

JUDGE