

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISUMU
CIVIL CASE NO. 126 OF 2000 (O.S.)

1. ALMADA NGOYA OUKO.....1ST PLAINTIFF

2. JOHN ONGAYO OUKO.....2ND DEFENDANT

VS

1. THOMAS OMOLO KAMIRE.....1ST DEFENDANT

2. ALFRED O. OWINO.....2ND DEFENDANT

RULING

This is an application dated 29th October 2002 brought by Zakayo Ouma Omollo , Philister Banja Omollo and Jared Otieno Omollo for an order to join them in this suit as defendants. The application is indicated to be brought under Order 01 rule 10 (2) of Civil Procedure Rules and Section 3A of CPA and is based on an affidavit of Zakayo Ouma Omollo. The application is opposed by the plaintiffs who rely on a replying affidavit of Almada Ngoya Ouko the 1st plaintiff.

In his submission Mr. Ouma stated that the applicants are staying on the suit land and are beneficiary interested in the estate of the late Opiyo Okoth was originally registered as the proprietor of the whole of the suit land. He added that the 1st defendant had no capacity to transfer the parcel of land into his name. Mr. Ouma contended that the plaintiffs have sued the defendants in this case challenging the title of the 2nd defendant and seeking a rectification of the said title. He claimed that the plaintiffs also challenged the capacity of the 1st defendant to transfer into his name the title which was originally registered in the name of Opiyo Okoth. However on 26th October 2000 the parties in the suit entered into a consent which was recorded in court and which was to the effect that the disputed parcel of land be transferred into the names of the plaintiffs. According to Mr. Ouma the parties in entering into the said consent did not take into the consideration their interests of the applicants in the suit parcels of land.

Mr. Kowinoh for the plaintiffs opposed the application contending that it has been brought up too late in the day and that the reason for the delay have not been given or explained. According to Mr. Kowinoh the applicants are the wife and the sons of the 1st defendant who have all along been aware of all the developments in this case from its inception. He added that the consent was recorded on 26th October 2000 this application was filed on 4th November 2002 which was after a long time and for that reason the applicants do not deserve to be joined. He contended that this application has also been overtaken by events and it ought to be dismissed.

As indicated above this application is brought under Order 1 rule 10 (2) of CPR which confers upon this Court a wide discretion . It has been disclosed that the applicants are a wife and sons of the 1st defendant. It is therefore clear that they have been aware of this case all along but they have not given any reason for the delay in bringing the application without delay especially when the interest they claim to have relates to a claim over ownership some parcels of land inherited by the 1st defendant from his father. Having carefully considered the issues raised by the parties I find that the application is without merit. Accordingly I dismiss it with costs.

Dated and delivered this 4th February

January 2004.

B.K. TANUI

JUDGE