



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC PET. NO. 15 OF 2017

(CORAM: MOHAMMED N. KULLOW, J)

KIROPON OLE SIMPAI.....PETITIONER/APPLICANT

-VERSUS-

COUNTY GOVERNMENT OF NAROK.....1ST RESPONDENT

LEKAKENY NALIKITI.....PROPOSED 2ND RESPONDENT

RULING

Vide a Notice of Motion application dated 11th October, 2019 accompanied by the Supporting Affidavit sworn by Kiropon Ole Simpai the Petitioner/Applicant herein is seeking for Orders that Lekakeny Nalikiti be enjoined as a 2nd Respondent in these proceedings.

The Application is brought under Section 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act & Order 12 rule 3 & 7, Order 17 rule 1, 3 & 4 and Order 51 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law.

The application is premised on the grounds that the proposed 2nd Respondent herein has with the authority of the 1st Respondent taken possession of the suit property and therefore interfered with the peaceful and quiet possession of the suit property and further, that the forceful actual possession of the suit property by the proposed 2nd Respondent is likely to cause breach of peace with likelihood of bloodshed.

The Petitioner also contends that since the subject matter involves a public utility, other business men who operate their businesses within the same area stand to suffer irreparable damage and loss.

The Application is opposed by the Replying Affidavit of the proposed 1st Respondent herein sworn by Elizabeth Sanangoi Lolchoki on 22nd November, 2019. The proposed 1st Respondent contends that the application is unmerited for the reasons that it has taken the Petitioner 3 years to see to it the need to enjoin the proposed 2nd Respondent as a party to the proceedings, a possible attempt by the Petitioner to prosecute the initial application and the delay occasioned by the Petitioner in prosecuting the Petition.

I have analyzed the Application, the Replying Affidavit and the Submissions filed by both parties.

The issue for determination is whether Lekakeny Nalikiti should be enjoined as a 2nd Respondent in these proceedings.

Before I proceed to give my determination, I have noted with concern the casual manner in which the Petitioner has approached this court. First, the Petitioner has not cited the relevant provisions of the law in which he seeks to enjoin the proposed 2nd Respondent as a party in the proceedings, secondly there are no annexures attached to the application despite indication of the same in the Supporting Affidavit, third, that the skeleton submissions filed seeks a prayer for stay of further proceedings herein pending the hearing and determination of this application which was not sought for in the application, and that Edward Kipngetch Rono be enjoined as an interested party and finally, the skeleton submissions is undated and unsigned.

Despite the omissions as stated above, I will be guided by Article 159 of the Constitution that justice shall be administered without undue regard to technicality and proceed to determine whether the application has merit.

Order 1 rule 10 (2) of the Civil Procedure Rules, 2010 provides that,

“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”.

In the Petitioner’s Supporting Affidavit dated 21st April, 2016. The proposed 2nd Respondent is mentioned as having issued an eviction notice to the Petitioner.

In the case of ***Kampala Coach Limited v First Community Bank Limited and another [2016] eKLR***, the High Court held in paragraph 36 and 37 that ‘ **In the result, it is my finding that it is only fair and just to join the proposed 2nd Plaintiff as well as the proposed 3rd and 4th Defendants to avert a situation where adverse orders affecting them would be issued without them being given an opportunity to be heard. The proposed 3rd and 4th Defendant’s will not be prejudiced in any way since any defence available to them will be open to them as if the proceedings are being instituted at the time of allowing the amendment’**

It is only fair and just that the proposed 2nd Respondent is enjoined as a party in these proceedings to enable this court conclusively hear and determine the Petition and further to avoid multiplicity of suits in this matter. Also, I do not see any particular prejudice that will be suffered by the 1st Respondent if at all the proposed 2nd Respondent is enjoined as a party to these proceedings.

Based on the foregoing, the Application dated 11th October, 2019 is allowed in terms of prayer 1. I also direct as follows:-

1. That the Petitioner to file and serve amended Petition within 14 days from the date of this Ruling.
2. The Respondents are hereby granted leave to file and serve Response to the Petition and an amended Response to the Petition within 14 days of service of the amended Petition.
3. Each Party to bear its own costs.

DATED, SIGNED and DELIVERED ONLINE at NAROK on this 17th day of February, 2021.

Mohammed N. Kullow

Judge

17/2/2021

In the presence of: -

CA:Chuma

Mr. Kere for the respondents

N/A for the applicants

Mohammed N. Kullow

Judge

17/2/2021