



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 772 OF 1996

KECIA WAMBUI.....1ST PLAINTIFF/RESPONDENT

REBECCA NJERI.....2ND PLAINTIFF/RESPONDENT

VERSUS

JOSEPH MWANGI KIMANI.....1ST DEFENDANT

MARGARET WARIARA MBURU....2ND DEFENDANT/APPLICANT

RULING

This was an application by Notice of Motion dated 22nd September, 2003 and filed on the same day. The application was made under Sections 3A and 99 of the Civil Procedure Act (Cap. 21, Laws of Kenya), and was in prayer for the following Orders:

- a. that the Order given by the Honourable Mr. Justice Hayanga on 1st October, 2002 in pursuance of the application by Margaret Wariara Mburu to be joined to this suit, be varied and/or amended to read that the said Margaret Wariara Mburu is so joined to the suit as the Second Defendant;
- b. that the Applicant's Defence and Counterclaim dated 11th December, 2002 and filed on 22nd January, 2002 be deemed as properly filed and served;
- c. that the costs of this application be in the cause.

The factual basis to support the application is supplied by the Affidavit of Wambui M. Mwangiri, the Advocate representing the Applicant. She states that on 26th September, 2002 she had filed an application to have Mrs. Margaret Wariara Mburu joined as a party to the suit, for the reason that she is the registered owner of the property in dispute in the suit. The prayer was granted by the Court and read out, but it was not extracted from the Court record. The deponent states that in the prayer requesting the order for joinder, the capacity in which the said Margaret Wariara Mburu would be joined was inadvertently not stated.

In the submission in Court, counsel for the Applicant stated that the order made by the Honourable Mr. Justice Hayanga, on 1st October, 2002 allowed joinder for the Applicant without specifying the capacity in which the Applicant was to stand in the suit.

Counsel informed the Court that the said Margaret Wariara Mburu had already filed a Defence and Counterclaim (filed on 22nd January, 2003), and was praying that the same be formally adopted as part of

the pleadings in the suit.

Counsel for the first Plaintiff/Respondent raised the objection that the said Margaret Wariara Mburu had not been sued, and accordingly, the Plaintiffs' pleadings had not had her in contemplation. Counsel for the Applicant responded that the said Margaret Wariara Mburu could only be effectively integrated into the suit if she appeared as a co-Defendant, rather than just as an Interested Party. Only this, counsel submitted, would enable Ms. Margaret Wariara Mburu to effectively address the Court. Counsel submitted that an exclusion of the Applicant from the full capacity of a party could lead to a multiplicity of suits, which would not be in the best interests of justice; and she submitted further that such a joinder of parties would not prejudice the Respondents in any way. The second Plaintiff, who appeared in person, had no objection to joinder of the Applicant as a co-Defendant.

The fact scenario emerging, seen in the context of the submissions of counsel, leads to the position that it is in the best interests of all the parties, and of the effective prosecution of this case, that the Applicant be formally joined as the second Defendant.

Accordingly, I order that the Applicant be joined as the second Defendant.

I also determine that the Applicant's anticipatory Statement of Defence and Counterclaim, filed on 22nd January, 2003, shall be formally adopted as part of the pleadings in the suit.

DATED and DELIVERED at Nairobi this 19th day of December, 2003.

J. B. OJWANG

Ag. JUDGE

Coram: Ojwang, Ag. J.

Court clerk: Mutea

For the Applicant: Ms. Wambui Mwangiri, Instructed by M/s W. M. Mwangiri & Co. Advocates

For the 1st Plaintiff/Respondent, Mr. Mutinda, Instructed by M/s. Flavia Rodrigues & Co. Advocates.