



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO. 79 OF 2018

ALEXENDER HOOPS

AMOS MUGAMBI

PATROBAS AWINO

(SUING AS THEMSELVES AND AS REPRESENTATIVES OF

SOWESAVA SELF HELP GROUP).....PLAINTIFF

VERSUS

NATIONAL POLICE SERVICE.....1ST DEFENDANT

OCS BURUBURU

POLICE STATION.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

INSPECTOR GENERAL OF POLICE.....4TH DEFENDANT

AND

NAIROBI CITY COUNTY GOVERNMENT.....1ST INTERESTED PARTY

NATIONAL LAND COMMISSION.....2ND INTERESTED PARTY

RULING

The 1st Interested Party filed a notice of preliminary objection dated 6/7/2020 contending that it was non-suited in these proceedings. Parties filed submissions on the preliminary objection. The Attorney General informed the court that it was not participating in the preliminary objection.

The 1st Interested Party submitted that under Order 1 Rule 10 (2) of the Civil Procedure Rules, the court may at any stage of the proceedings either upon or without application of either party and on such terms as may appear for the court to be just order that the name of any party improperly joined whether as plaintiff or defendant to be struck out and that the name of any person who ought to have been joined or whose presence before the court may be necessary in order for the court to effectually and completely adjudicate upon and settle the questions involved in the suit be added to the suit.

The 1st Interested Party submitted that it was non- suited in these proceedings since the main question raised by the Plaintiff was on ownership of the suit land which question was placed before the 2nd Interested Party for determination pursuant to the National Land Commission Act. It argued that the 2nd Interested Party had already made a determination that the suit land should revert to the initial status of being public utility land specifically for settlement of squatters represented by the Plaintiff. The 1st Interested Party claimed that he Plaintiff's suit did not raise any cause of action against it and that if the orders sought by the Plaintiff were to be granted, none could be enforced against it. It urged that the pleadings do not raise any triable issue against the 1st Interested Party and that the Plaintiff has no reasonable cause of action against it. It urged the court to find that the 1st Interested Party was non-suited in the proceedings.

The Plaintiff submitted that the preliminary objection did not raise any matters of law and did not cite any s of law. The Plaintiff argued that misjoinder of parties was not a pure point of law and could not be the subject of a preliminary objection. Further, that there was no preliminary objection before the court. It contended that under Order 9 Rule 9 of the Civil Procedure Rules, no suit can be dismissed because of joinder or misjoinder of a party.

The Plaintiff submitted that the 1st Interested Party with the Ministry of Lands allowed the members of the Plaintiff's Self Help Group to settle on the land in dispute and that it was a party to **ELC No. 301 of 2018 – Gidjoy Investments Limited v Nairobi City County Government and others** in which ownership of the suit land is in dispute. Further, that joinder of the Interested Party was necessary to assist the court effectually determine the issues in controversy. The Plaintiff added that joinder or misjoinder of parties was a discretionary issue which requires ascertainment of some facts and would defeat what a preliminary objection is. The Plaintiff relied on **Garden Square Limited v Kogo and Another [2003] KLR 20** where the court observed that the point raised in that case on joinder of a defendant was not a proper point of preliminary objection because it could not of itself defeat the suit and that the argument should have been canvassed in a substantive application for striking out the name of the defendant from the suit. The court observed that raising it as a preliminary objection was a misconception for what constituted a true preliminary objection was a pure point of law that would have the effect of disposing the suit or application entirely if it were successfully taken.

The issue for determination is whether the court should allow the preliminary objection filed by the 1st Interested Party. From the plaint filed in court on 22/2/2018, the court notes that the Plaintiff brought it against four Defendants and added two Interested Parties. The Plaintiff does not make any allegations against the 1st Interested Party in the plaint save for references to instances when the 1st Interested Party came to the aid of the Plaintiff when attempts were made to make the suit land a dumping site and when there were attempts to subdivide the land. The prayers sought in the plaint dated 21/2/2018 are against the 1st, 2nd and 4th Defendants said to be trespassers on the suit land. No orders are sought against the 1st Interested Party.

While the court agrees with the Plaintiff that the proper procedure that the 1st Interested Party ought to have followed in seeking to be removed from these proceedings was through an application for the striking out of its name from the proceedings, the court is not convinced that the 1st Interested Party ought to remain in these proceedings. The Plaintiff has not been demonstrated that the participation of the 1st Interested Party in the proceedings is necessary to enable the court effectually and completely adjudicate upon and settle the question of ownership of the suit land.

The court allows the 1st Interested Party's objection to being made a party to these proceedings. The Plaintiff will pay the costs of the 1st Interested Party.

The other issue of concern to the court is why the Plaintiff added the two interested parties to the suit yet it does not make any claims or seek any orders against them. In this court's view, the two parties do not have any discernible interest in the dispute and could be called as witnesses to testify on behalf of the Plaintiff if it so wished. If the officers of these two entities were to refuse to cooperate and record witness statements, then the Plaintiff can take out witness summons for these parties to attend court and give such evidence as may be necessary for the court to make a fair determination of the dispute.

In the interest of saving the scarce judicial time and based on the Plaintiff's submission that there is another suit being **ELC No. 301 of 2018** where ownership of the suit land is in issue, the Plaintiff should elect whether it wants to proceed with this suit or have it stayed until **ELC No. 301 of 2018** is determined. It is important for parties to avoid multiplicity of suits over the same subject matter for otherwise the numerous suits delay the expeditious resolution of disputes.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF MAY 2021.

K. BOR

JUDGE

In the presence of: -

Mr. E. Amolo holding brief for Mr. G. Gilbert for the Plaintiff

Ms. F. Ali holding brief for Mr. A. Kamau for the Defendants

Ms. M. Ochieng holding brief for Mr. V. Ataka for the 1st Interested Party

Mr. V. Owuor- Court Assistant

No appearance for the 2nd Interested Party