



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 82 OF 2018

MARTIN MACHARIA KAMAU.....PLAINTIFF

VERSUS

PETERSON NJOROGE.....1ST DEFENDANT

DISTRICT LAND REGISTRAR KITALE.....2ND DEFENDANT

HON. ATTORNEY GENERAL.....3RD DEFENDANT

AND

JOSEPH KIPTANUI KIMETO.....APPLICANT

RULING

1. The application dated **16/7/2019** and filed in court on the same date has been brought by the applicant **Joseph Kiptanui Kimeto** who seeks an order that he be enjoined in this suit as a defendant and that the costs of the application be provided for.
2. The applicant has brought the application under **Section 1A, 1B, 3 and 3A of the Civil Procedure Act, Order 1 Rule 10(2) and Order 51 Rule 1 of the Civil Procedure Rules**.
3. The grounds on which the said application is made are that the applicant herein has an interest in the plot in dispute as according to the company records he is a shareholder and member of **Tuwan Farm Company Ltd** being member No. **1451** jointly with the plaintiff and the 1st defendant and one Philip Adika; that plot No. **Kitale Municipality Block 2/Tuwan/2756** was to be shared among the four people, the applicant included, but instead the title deed was exclusively issued in the name of the plaintiff, effectively excluding the applicant from ownership of the plot; that it will only be fair and the applicant be made a party to this suit so that he can be able to champion his interests; that neither the plaintiff nor the defendants will be prejudiced if this application is allowed and that the applicant resides in Nandi and he only learned of this case recently.
4. The application is supported an affidavit of the applicant dated **16/7/2019** which reiterates the above grounds.
5. The plaintiff filed a replying affidavit on **29/7/2019** in which he responded to the application as follows: that he admits that the applicant and the 1st defendant are members of Tuwan Farm Co. Ltd which owned the Tuwan area of Kitale Municipality; that his clearance for the payment of the survey fees was issued by the area Chief; that the application at hand is a collusion between the 1st defendant and the applicant ; that the plaintiff has never had any dealings with the applicant who owned 10 plots in Tuwan Farm Ltd, some of which he has transferred; that the 1st defendant also owns a plot which he has sold to a third party; that the 1st defendant recently instigated Tuwan Farm Ltd to request the plaintiff to return the title deed for Kitale Municipality Block 1/Tuwan/2756 which request he declined to comply with as in his belief only a court of law could cancel the title; that the applicant's application is an afterthought as this case has been pending for a long time; that the applicant's caretaker has always attended court in this matter; that the applicant has known that the plaintiff is the owner of the suit land since the plaintiff was issued with title in 2011; that no written agreement has been exhibited to show that the applicant bought the plot jointly with the plaintiff; that the application is filed after a long delay of 2 years after the filing of the main suit and the applicant is therefore guilty of inordinate and inexcusable delay; that the applicant has not registered any caution against the title subject matter of this suit and has no reason to be enjoined to this suit; that the granting of the application would result to misjoinder of parties and causes of action which is prohibited in law since the applicant's claim is for a share of the suit premises a separate suit is the proper remedy; that granting the orders will bring confusion and delay the hearing and determination of this suit which is against the principle that litigation must come to an end; that the allegation that Kitale Municipality Block 1/Tuwan/2756 was to be shared by four people is incorrect; that there are proceedings for removal of caution before the District Land Registrar Kitale; that the 1st defendant and the applicant lodged their claim over the plot before the Chief Tuwan Location who dismissed their claims and upon that dispute escalated to the District Officer the latter recommended that a suit be filed in court over the ownership of the premises.

6. The interested party/applicant filed submissions on **25/10/2019** while the plaintiff had filed his earlier on **15/10/2019**. I have considered the application, the response and the submissions.

7. In the instant applicant the main issues that arises for determination is whether the applicant should be made a defendant in the suit. The application is brought under **Order 1 rule 10 (2)** of the Civil Procedure Rules which provides as follows:

"(2)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."

8. It is clear from the provisions set out above that the court's discretion on the joinder of any party either as plaintiff and defendant or striking out of any party is very wide. The only ground that the court requires to take into consideration is whether the presence of that person sought to be joined as party is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

9. And therein lies the applicant's dilemma. He has sought to be enjoined as a defendant while claiming co-ownership of the plot in question whereas the plaintiff's claim against the defendants is only for removal of a caution registered over the suit land in favour of the 1st defendant. I have not heard applicant to say that he too has a caution placed over the suit property.

10. In this case the applicant has not filed a suit of his own against the plaintiff herein claiming co-ownership of the suit land. The battle existing in this suit is purely between the plaintiff and the defendants over whether a caution and a restriction placed over the suit land should be removed.

11. I have already observed above that in determining the issue of joinder of a party a court must take into consideration is whether the presence of that person sought to be joined as party is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

12. The burden lay on the applicant to demonstrate that his presence is necessary for the purpose of enabling the court to effectually and completely adjudicate upon and settle all questions involved in the suit. Now that he does not have a caution registered in his favour over the land and he does not claim to be party to the lodging the existing of caution against the same title alongside the 1st defendant this court finds that his cause of action does not arise from the same set of facts that led to the filing of this suit by the plaintiff. Consequently he has not demonstrated that he is a necessary party as required by **Order 1 Rule 10 (2)** of the Civil Procedure Rules.

13. In my view therefore the claim by the applicant being for co-ownership of the suit land should not be consolidated with a claim by the plaintiff for the removal of a caution as that may confuse the issues involved. This court is of the further view, concurring with the plaintiff, that such joinder may also delay the hearing and determination of this matter.

14. The upshot of the foregoing is that the application dated **16/7/2019** has no merit and the same is hereby dismissed with costs.

Dated, signed and delivered at Kitale on this 4th day of November, 2019.

MWANGI NJOROGE

JUDGE

4/11/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Ndwiga for plaintiff

Mr. Wanyonyi holding brief for Munialo for the 1st defendant and for the applicant.

COURT

Ruling delivered in open court at 3.00 p.m.

MWANGI NJOROGE

JUDGE

4/11/2019.