



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO. 814 OF 2016**

**CREEK VIEW LIMITED.....PLAINTIFF**

**=VERSUS=**

**ESTHER NJERI.....DEFENDANT**

**CARE CATERING AND SUPPLIES LIMITED...PROPOSED DEFENDANT**

**=AND=**

**THE KENYA NATIONAL HIGHWAY AUTHORITY**

**& 3 OTHERS.....INTERESTED PARTIES**

**RULING**

1. This is a ruling in respect of a chamber summons dated 13<sup>th</sup> October 2017 brought by the defendant/applicant seeking striking out of the defendant's name and in place thereof the name of Cares Catering and Supplies Limited be brought on board. The application also seeks extension of time for issuance of third party notices to Kenya National Highways Authority (KENHA), County Government of Kiambu and Attorney General.

2. The defendant/applicant M/s Esther Njeri Njenga had been sued in this suit by the plaintiff. She has now brought this application seeking her name to be struck out and replaced with that of Cares Catering and Supplies Limited as the defendant. The reason for this is that it is the company where she is a director which is the registered owner of LR No Kiambaa/Ruaka/3039 which relates to the dispute in this case.

3. The plaintiff is not opposed to the application by the defendant. Those opposed to the application are KENHA and the County Government of Kiambu. KENHA has filed grounds of opposition dated 17<sup>th</sup> November 2017 and filed in court on 20<sup>th</sup> November 2017 KENHA which is named herein as the first interested party contends that the applicant's application is misconceived and is a non-starter and that it is an attempt to cure defects in the applicant's defence and counter-claim; that the application is meant to pre-empt the prayers by KENHA in its application filed on 31<sup>st</sup> October 2016.

4. On its part, the County Government of Kiambu has opposed the application through a notice of preliminary objection filed in court on 5<sup>th</sup> January 2018. The County Government of Kiambu contends that the court has no jurisdiction to entertain the issue of boundary dispute.

5. I have considered the applicant's application, the opposition thereto by the first and interested parties as well as the opposition thereto by the parties herein. The issues for determination are firstly whether the name of the applicant should be struck out and replaced with that of Cares Catering and Supplies Limited and if time to issue third party notice should be extended. Order 1 Rule 10(2) of the Civil Procedure Rules is clear that the court may at any stage of the proceedings on application or on its own motion strike out the name of a party improperly sued and replace it with the proper party. In the instant case, the applicant has shown that she is not the proper party to have been sued. She is a director in the company which is sought to be brought on board. The application cannot be defeated because KENHA had already filed an application which may be overtaken if the proper party is allowed into the suit.

6. On the issue of leave to issue third party notices, I find that this prayer is misconceived. The applicant had already named those she seeks to issue with third party notices as interested parties. She cannot again seek to issue third party notices to them. I therefore find that the prayer for issuance of third party notice cannot be allowed. I only allow the prayer to have her name struck out and the same be replaced with that of Cares Catering and Supplies Limited as a defendant. The Plaintiff should accordingly be amended and summons served upon the new defendant. Costs in the cause.

It is so ordered.

**Dated, signed and delivered at Nairobi on this 4<sup>th</sup> day of October 2018.**

**E.OBAGA**

**JUDGE**

In the presence of :

M/s Wanjiku for Mr Otachi for 1<sup>st</sup> interested party

Mr Ojjo for defendant

Hilda : Court Assistant

**E.OBAGA**

**JUDGE**