

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 2156 OF 2007

SCORPION PROPERTIES LIMITED.....PLAINTIFF

=VERSUS=

P I MODY.....DEFENDANT

RULING

1. The dispute in this suit relates to the question of ownership of a parcel of land situated in Gigiri, Nairobi. M/s Scorpion Properties Limited claim to be the legitimate registered proprietor of the said property, having purchase it at valuable consideration from one Robert Otachi [2nd defendant] in 2006. Similarly, Mr P I Mody claims to be the legitimate registered proprietor of the same property, pursuant to a letter of allotment issued to him by the defunct City Council of Nairobi on 1/2/1996. The dispute is scheduled for substantive hearing on 8/7/2021.

2. For consideration in this ruling is Mr P I Mody's application dated 14/4/2021 through which he seeks an order of joinder, making the Director General (**the DG**) of the Nairobi Metropolitan Services (**the NMS**) a party to this suit. The application is supported by an affidavit sworn on 14/4/2021 by George Oner, an attorney of Mr P I Mody.

3. The applicant contends that the DG is a necessary party for the complete and effectual adjudication of this dispute because the title he (Mr P I Mody) holds is a lease granted by the defunct City Council of Nairobi. The Council was succeeded by the Nairobi City County Government. He adds that land administration is one of the functions that were in March 2020 transferred to the NMS through Gazette Notice No 2694 of 26/3/2020. Consequently, it is his position that due to the transfer of land administration functions to the NMS, the NMS is now the entity seized of relevant records and information relating to this dispute, hence the need to join the DG on behalf of the NMS, as party to the suit.

4. M/s Scorpion Property Limited is the only party who opposed the application. Mr Ndingi who appeared for M/s Scorpion Property Limited relied entirely on their grounds of opposition and elected not to submit on the application.

5. I have considered the application together with the applicant's submissions. I have also considered the grounds of opposition by M/s Scorpion Properties Limited. Further, I have considered the relevant legal framework and jurisprudence on the question falling for determination in this application. The single question falling for determination in this application is whether the applicant has satisfied the criteria upon which our trial courts exercise jurisdiction to grant an order of joinder.

6. The criteria upon which an order of joinder is granted is set out in Order 1 rule 10(2) of the Civil Procedure Rules which provides as follows:

“10 (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 the name of any of 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.”

7. The applicant in the present application contends that the title he holds is a lease from the defunct City Council of Nairobi. The Council was succeeded by the Nairobi City County Government. Through Legal Notice No 2694 of 20/3/2020, various functions were transferred from the Nairobi City County Government to the Nairobi Metropolitan Services (NMS). He contends that the NMS is the institution now seized of records relating to land administration functions in the Nairobi City County.

8. In my view, if indeed land administration functions have been transferred to the Nairobi Metropolitan Services and the transfer remains valid, the Director General would be a necessary party for the complete and effectual settlement of the question relating to ownership of the suit property. There is no evidence of any prejudice which may be suffered by any of the existing parties as a result of the Director General's joinder. Consequently, I will allow the notice of motion dated 14/4/2021 in terms of prayers 2 and 3. Costs shall be in the cause.

9. The amended counter-claim shall be filed and served within three working days. Hearing of the main suit shall be on 8/7/2021 as already scheduled

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF JUNE 2021.

B M EBOSO

JUDGE

In the Presence of: -

Court Assistant: June Nafula