



REPUBLIC OF KENYA
IN THE ENVIRONMENTAL AND LAND COURT
AT MOMBASA

ELC CASE NO. 373 OF 2009

RICHARD KIMANI.....PLAINTIFF

VERSUS

SWALEHE MOHAMED MWAKURIWA

HAMISI AYUBU MWAMJITA

HASHIM GOT SAT

SHEILA LOVE RIDGE

DR. KAWALJEET SINGH REKHI

THE HON. ATTORNEY GENERAL.....DEFENDANTS

AND

COUNTY GOVERNMENT OF KWALE...INTENDED INTERESTED PARTY/APPLICANT

RULING

1. The application for determination is brought by the intended interested party and is dated 21st January 2021. Its brought under Order 1 Rule 10 (2), Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B, 3, 3A and 63 (e) of the Civil Procedure Act and seeks determination of the following prayers:-

a. Spent

b. That the applicant be enjoined as the interested party forthwith for further orders.

c. That the parties be compelled to serve all pleadings upon the applicant consequent to the enjoinder orders.

d. That the costs of the instant application be provided for.

2. The applicant herein avers that it is the 3rd defendant in ELC No 174 of 2012, where the 3rd defendant herein (Sheila Loveridge), has instituted a suit vide an amended plaint dated 1st October 2012. That the applicant intends to seek the suit therein to be dismissed for lack of cause of action, however the court on 3rd October 2017 stayed the suit. The applicant state that they are unable to file the application therein, and seeks to be enjoined in this suit.

3. The director of legal services of the applicant, one Kelvin M. Dzumo swore the supporting affidavit. He stated that the 3rd defendant's suit against the applicant in ELC 174 of 2012 has no cause of action and will be seeking court to strike it out. He also stated that the orders of the court staying the matter has stopped the applicant from making the application in that suit. He further stated that the inclusion of the applicant in the said suit has caused loss of revenue of Land rates collection and the only remedy available to the applicant is to be enjoined to the suit herein.

4. The plaintiff has opposed the application vide Grounds of Opposition dated 31st March 2021. That the application is grossly misconceived,

gravely misplaced, fatally and incurably defective, incompetent, frivolous, vexatious and an abuse of court process. That the suit herein is against the defendants only and has no bearing whatsoever against the applicant. More to that the plaintiff believes that the applicant has not demonstrated any sufficient stake on its part in the proceedings herein or proved how its addition to the case will aid court to resolve the dispute between the parties.

5. The 4th defendant has similarly opposed the application vide grounds of opposition dated 5th May 2021 and reiterated the sentiments raised by the plaintiff in his grounds of opposition. She stated that inter alia that the application ought to have been filed in ELC 174 of 2012 where the stay orders were issued and that it is not procedural/proper for the applicant to file an application in this suit to strike out an order issued in a different suit. That the application is only meant to delay the final determination of the suit herein.

6. I have considered the application herein as well as the submissions made.

7. Order 1, Rule 10 (2) of the Civil Procedure Rules empowers court to join a party to a suit at any state of the proceedings on such terms as may appear to the court to be just. The court will join a party into a suit where it deems the presence of that party to be necessary in enabling the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

8. The applicant seeks to be joined into this suit on the basis that, in ELC 174 of 2012 where the applicant is sued by the 3rd defendant herein raises no cause of action. That since the court in the suit therein stayed the proceedings, the County seeks to be enjoined herein to prevent the loss of income that it is currently experiencing. The plaintiff and the 4th defendant have opposed the application for the reasons inter alia that the applicant has not established the value it brings to the case and that it is using the application to delay the suit.

9. In my view the reasons fronted by the applicant are not going to aid the court to effectively and completely adjudicate over the suit herein. The applicant is pleading issues that should be litigated upon in ELC 174 OF 2012 and not herein. This suit is quite old, having been filed in 2009 and is part-heard. This application comes off as a delaying tactic by the applicant.

10. I am persuaded to conquer with the plaintiff's submissions where he relied on the case of **Harpal Singh Semhi & 4 others v Zehrabanu Janmohammed & 3 others; Sports Registrar & 9 others [2020] eKLR where it was held:-**

“The guiding principles encompassing the enjoinder of an interested party to a suit were articulated by the Supreme Court in the decision of Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others & Michael Wainaina Mwaura (as Amicus Curiae) [2017] eKLR with reference to Francis Kariuki Muruatetu & Another v Republic & 5 others Petition 15 as consolidated with 16 of 2013 [2016] eKLR relied upon both by the 1st defendant and the intended interested parties, and are as follows:

“One must move the Court by way of a formal application. Enjoinder is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:

i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

ii. The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”

11. The applicant herein has not identified to court the interest it has in the suit herein nor has it laid down how it will add value to the suit. Without sufficient grounds, the court is not moved to exercise its discretion and enjoin the applicant to the suit. In light of the above findings, I find no merit in the Notice of Motion dated 21st January 2021 and dismiss it with costs to the plaintiff and 5th defendant.

12. Orders accordingly

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 8TH DAY OF JUNE, 2021

C.K. YANO

JUDGE

IN THE PRESENCE OF:

Yumna Court Assistant

C.K. YANO

JUDGE