



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 327 OF 2014

GEORGE KIGEN CHEBOIYWO.....1ST PLAINTIFF

HARON CHEPKAT KIMUGE.....2ND PLAINTIFF

SOLOMON CHIRCHIR.....3RD PLAINTIFF

JONATHAN BENEI.....4TH PLAINTIFF

WILLIAM KIPROTICH TOROITICH.....5TH PLAINTIFF

KIKWAI BARMOSOT.....6TH PLAINTIFF

VERSUS

KIPNGOK CHIRCHIR.....1ST DEFENDANT

JOSEPH CHELELGO.....2ND DEFENDANT

KIPTALLAM CHIRCHRIR.....3RD DEFENDANT

RULING

1.The applicant moved the court by way of Notice of Motion dated 11th March, 2021 seeking the following orders:

(1) *THAT this honorable court be pleased to grant leave to the plaintiff to amend the Plaint herein to include:-*

a) Kendagor Kisapari, Annah Kobilu Chelimo, Amos Kibii Kigen, Francis Kipkogei Songok, Kipkuto Cheruiyot, Kiprotich Kemboi, Limo Cheruiyot, Sila Boit Komen, Lisa Cheptoo Komen, Kibiwot Chepkeitany, David Kangoyo, Sammy Kiptui, Belinda Rutto, Peris Chebet, John Kandie, Chesang K. Eric as Plaintiffs and or interested parties.

b) Justus Kiplangat, Richard C. Keitany, Kiptalam C. Sembele, Kiptanui Kibiator, Kemeli A. Cheruiyot, Lotepa Chepkochei, Justine R. Kandie, John Cheruiyot, Alfred Kipkosgei Koros and Kibet Tanui as Defendants.

(1) *THAT the costs of this application be provided for.*

2.The application is supported by an affidavit sworn by Solomon Chirchir Tuwei who deposed that the plaintiffs and intended plaintiffs herein are owners of various portions of L.R No. 482/5, 482/6 and 6547 (Curtis Estate) and have occupied the same for many years. He further stated that consent was entered between the parties herein to remain in their portions as marked out by the group's surveyor and not trespass into other members' portion and also for the status quo to be maintained. He annexed orders issued to that effect.

3.He deposed that despite the orders issued, there has been continued interference by the intended defendants making it impossible to enforce the said orders as the persons interfering are not parties to this suit. That there is need to amend the plaint and include all the parties herein to enable this court adjudicate the matter to finality.

4.The defendants opposed the application through a replying affidavit sworn by the 3rd defendant herein Kiptalam Chirchir Sembele who

deposed that the issue in this case is whether the plaintiffs are entitled to more land than their paid up shares. Further, that the issues in the case can effectually and conclusively be determined between the parties already before court. He concluded by stating that enjoining the intended parties to this suit shall cloud the issues, embarrass and delay the trial of the suit.

5. Parties elected not to make any oral submission or file written submissions to the application but relied on their supporting and replying affidavit.

6. The suit property NAKURU L.R No. 482/5, 482/6 and 6547 (CURTIS ESTATE) was purchased by the plaintiffs herein as Koyamtech Farm Limited a land buying company. The main dispute is over the manner in which some land that was purchased in the year 1996 was distributed to the members which is pending hearing and determination. The plaintiffs have brought this instant application seeking to enjoin parties to the suit as there have been various contempt applications against third parties who are not parties to the suit making it difficult to resolve the matter.

7. An application for joinder of a plaintiff or defendant as an additional party to a suit is at the discretion of the court. The court can act on its own motion and/or may be moved by way of an application by a party. **Order 1 Rule 10 (2) of the Civil Procedure Rules** provides as follows:

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. The consideration by the court in determining an application for joinder principally is whether a party's presence is necessary to enable the court effectually and completely adjudicate upon and settle all the questions that are in issue in a suit. Further, joinder may be allowed where the orders which are being sought would legally affect the interests of that person and also to avoid multiplicity of suits See **Pravin Bowry – vs- John Ward & Another [2015] eKLR.** and **Deported Asians Property Custodian Board -vs- Jaffer Brothers Ltd [1999] 1 E.A 55 (SCU)**

9. The Supreme Court has held that while determining whether an applicant qualifies for admission as an interested party, the applicant has to have a stake in the proceedings or will be affected by the decision of the court. See **Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others [2014] eKLR.**

10. In the instant case, the applicant has stated that despite the orders issued for status quo to be maintained and parties to remain in their respective portions, there has been continued interference with the suit property by the intended defendants making it difficult for the applicants to enforce the said orders.

11. In this matter efforts to have the order of maintenance of the status quo made by court complied with has been difficult to enforce. It does appear that several persons who are affected by such order are not parties to the suit. Such parties stand to be affected by any orders that the court may finally make upon hearing the case. Their interest in the suit property would only become evident if they are parties in the case because they would then either through their pleadings and/or evidence at the trial stated their interest.

12. The determinant factor in joinder of parties is whether a common question of fact or law arises between the existing and the intended parties.

13. In the suit herein, the issues revolve around the distribution and ownership of the suit property NAKURU L.R No. 482/5, 482/6 and 6547 (CURTIS ESTATE) which involves similar parties who are members of Koyamtech Farm Limited that bought the suit land. Therefore, it is my considered view that in order to determine the issue in controversy between the plaintiffs and the intended defendants on one hand and the defendants on the other hand, it will be prudent to have all concerned parties to the suit property to be before the court as this not only prevents duplication of efforts, but also allows the court determine the relief in its entirety and all common issues of fact and law which arise between the parties.

14. In conclusion, it is therefore my view that the applicant's application has merit and the same should be allowed. The intended 7th to 22nd plaintiffs and the 4th to 13th defendants to be enjoined to the suit as plaintiffs and defendants respectively.

15. The plaintiffs are accordingly granted liberty to file and amend plaint/enjoining the new parties within the next 14 days from the date of this ruling. The enjoined defendants to be served with summons to appear within 30 days from the date of the ruling and the matter to be fixed for pretrial directions on 12th October 2021.

16. The cost of the application will be in the cause.

17. Orders accordingly.

Ruling dates signed and delivered virtually at Nakuru this 28th day of July 2019.

J M MUTUNGI

JUDGE