



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAHURURU

ELC NO. 12 OF 2020

JERUSHA MUTHONI MWANGLI.....PLAINTIFF

VERSUS

DEDAN IKUA KAMAU.....1ST DEFENDANT

JOSEPH NJUGUNA KAMAU.....2ND DEFENDANT

MALEWA RANCHING COMPANY LIMITED.....APPLICANT

RULING

A. THE APPLICANT'S APPLICATION

1. By chamber summons dated 1st March, 2021 brought under **Section 3A of the Civil Procedure Rules (Cap. 21), Order 1 Rules 10(2) and 14 of the Civil Procedure Rules, 2010 (the Rules)**, and all enabling provisions of the law, the Applicant sought leave of court to be joined as an Interested Party in the suit.
2. The application was based upon the grounds set out on the face of the chamber summons and the contents of the supporting affidavit sworn by Raphael Chege Njaga on 1st March, 2021. It was contended that the Applicant, Malewa Ranching Company (*the Company*) was the original proprietor of the suit property and that it was the custodian of the register of all the *bona fide* members of the company. It was further contended that the company had the necessary material information to enable the court to effectually and completely adjudicate upon the matters in controversy.

B. THE PLAINTIFF'S RESPONSE

3. The Plaintiff filed a replying affidavit sworn on 30th March, 2021 in opposition to the said application on several grounds. First, it was contended that the application was not brought in good faith and that the company had not demonstrated its interest in the suit property. Second, that the company had not satisfied the legal requirements for joinder since it had not demonstrated that its joinder would result in a complete settlement of the dispute or that it may be adversely affected by any orders which may be issued in its absence.
4. The third reason was that the company could only be a necessary witness and not a party in the dispute if it had useful information which may assist the court in the just resolution of the dispute. The Plaintiff further pointed out that the deponent of the supporting affidavit had previously filed a witness statement dated 19th May, 2020 in support of the Plaintiff's allocation of the suit property but had taken a contrary position in the instant application. The Plaintiff was, therefore, of the view that the application was a waste of judicial time hence the same should be dismissed with costs.

C. THE DEFENDANTS' RESPONSE

5. The Defendants did not file any formal response to the application. However, when the application was listed for *inter partes* hearing on the 12th May, 2021, the Defendants' advocate informed the court that they were not opposed to the application.

D. DIRECTIONS ON SUBMISSIONS

6. When the application was listed for directions on 4th March, 2021 it was directed that the application shall be canvassed through written submissions. The parties were given timeline within which to file and exchange their respective submissions. The record shows that the company filed its submissions on or about 10th May, 2021. The Plaintiff did not file any submissions since she informed the court that she

wished to rely entirely upon her replying affidavit. The Defendants did not file any submissions since they were not opposed to the application.

E. THE ISSUES FOR DETERMINATION

7. The court has considered the chamber summons dated 1st March, 2021, the replying affidavit in opposition thereto as well as the material on record. The court is of the opinion that the following issues arise for determination herein:

(a) *Whether the company has made out a case for joinder as an interested party.*

(b) *Who shall bear costs of the application.*

F. ANALYSIS AND DETERMINATION

(a) Whether the company has made out a case for joinder as an interested party

8. The court has considered the material and submissions on record on this issue. It is apparent that the only reason why the company seeks to join the suit is that it has some useful material which may assist the court in a just and affectual resolution of the suit. It was contended that the disputing parties were members of the company and that it had records showing who was allocated the property in dispute. The company relied upon the cases of **Francis Karioko Muruatetu and Another v R [2016] eKLR** and **Raila Amolo Odinga and Another v Independent Electoral and Boundaries Commission and 2 Others [2017] eKLR** in support of its application.

9. **Order 1 Rule 10(2)** of the **Rules** on joinder of parties stipulates 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.”

10. In the case of **Shirvling Supermarket Ltd v Jimmy Ondicho Nyabuti and 2 Others [2018] eKLR** the court considered the test for joinder as follows:

“The test in applications for joinder is firstly, whether an applicant can demonstrate he has an identifiable interest in the subject matter in the litigation though the interest need not be such interest as must succeed at the end of the trial. Secondly, and in the alternative, it must be shown that the applicant is a necessary party whose presence is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.”

11. Similarly, in the case of **Trusted Society of Human Rights v Mumo Matemu and 5 Others [2014] eKLR** the court held that an interested party was:

“...an interested party is one who has a stake in the proceedings though he or she was not a party in the cause *ab initio*. He or she is one who will be affected by the decision of the court when it is made, either way such a person feels that his or her interest will not be well articulated unless he himself or she herself appears to the proceedings and champions his or her cause.”

12. The court also considered the case of **Pizza Harvest Limited v Felix Midigo [2012] eKLR** on who a necessary party is. In the said case, Havelock J held as follows:

“...I have also been taken cognizance of the case of Amon v Raphael Tuck and Sons Limited (1956) 1 All ER 273 in which Devlin J held at page 286 -287:

“What makes a person a necessary party? It is not, of course, merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately ...the Court might often think it convenient or desirable that some of such persons should be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it would be necessary to hear them for that purpose. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.”
(Emphasis added)

13. The court is not satisfied on the basis of the material on record that the company has demonstrated that it has any identifiable stake in the proceedings. It has not demonstrated that it shall suffer any prejudice by reason of non-joinder or that any adverse orders may be issued against it in the proceedings. As indicated earlier, the only reason why the company sought to join the proceedings was that it had some information which may help the court in a just and complete resolution of the dispute. That may well be the case but that cannot make the company a necessary party or interested party in the suit. It can only make it a witness. As the material on record would show, the chairman

of the company has already filed a witness statement dated 19th May, 2020 in this matter. He has also filed a sworn affidavit in this matter even though its contents contradict the witness statement filed earlier on. In the premises, the court is not inclined to grant the prayer for joinder.

(b) Who shall bear costs of the application

14. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to **Section 27 of the Civil Procedure Act (Cap. 21)**. A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See **Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd [1967] EA 287**. The court finds no good reason why the successful party should not be awarded costs of the application. Accordingly, the Plaintiff be awarded costs of the application.

G. CONCLUSION AND DISPOSAL

15. The upshot of the foregoing is that the court finds no merit in the Applicant's application for joinder in the proceedings as an interested party. Accordingly, the chamber summons dated 1st March, 2021 is hereby dismissed with costs to the Plaintiff only.

It is so ordered.

Ruling dated and signed at Mombasa and delivered via Microsoft Teams platform this 8th day of July 2021.

In the presence of:

Ms Cherono for the Plaintiff

No appearance for the Defendant

Mr. Kago for the Applicant

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Y. M. ANGIMA

ELC JUDGE