



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC NO. 30 OF 2015

SIMON MBUGUA.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF TRANS-NZOIA.....1ST DEFENDANT

COUNTY EXECUTIVE OFFICER,

LAND, HOUSING & URBAN DEVELOPMENT.....2ND DEFENDANT

PHYSICAL PLANNER, TRANS-NZOIA COUNTY.....3RD DEFENDANT

RULING

The Application

1. The application dated **16/2/2021** and filed in court on **18/2/2021**, has been brought under **Sections 3A** of the **Civil Procedure Act, Order 1 Rule 3, 10(2)** and **14** of the **Civil Procedure Rules**. The 1st defendant seeks the following orders:-

- a. That this application be certified as urgent and heard on a priority basis.**
- b. That this Honourable Court be pleased to join the Honourable Attorney General of the Republic of Kenya and the National Land Commission as interested partes to this suit.**
- c. Upon the two being joined they be served with all the pleadings herein and be at liberty to file responses to the plaintiff's suit as they may deem fit.**
- d. That this honourable court be pleased to make any other or further directions as they may deem fit.**
- e. That costs of this application be provided for.**

2. The application is supported by the affidavit sworn on **16/2/2021** by the 1st defendant's counsel. The grounds upon which the application is made are that the Attorney General is a necessary party; that the suit land is public land vested in the National Land Commission and that it was illegally allocated to the plaintiff; that the witness from the government who has testified against public interest and that the **Civil Procedure Rules** allow joinder of a necessary party at any stage in the proceedings.

The Response

3. The plaintiff filed a replying affidavit sworn on **12/4/2021**. He deponed that he was not allocated the land; that he bought it from the original allottee; that the County Land Registrar testified as a public officer and not as an interested party pursuant to summons issued by this court; that the application is an afterthought and has been brought too late in the day in these proceedings after **6 years** and that the suit has been pending defence hearing since **4/3/2020**; that the application is therefore made in bad faith; that joinder of the proposed parties would only clog the suit and mar the proceedings and it is not in the best interests of justice; that in any event, from the pleadings and evidence already adduced, the Attorney General and the National Land Commission are not necessary parties in the suit and would not add any value to the proceedings.

Submissions

1. The 1st defendant filed its written submissions on **15/6/2021**. The plaintiff filed his written submissions on **16/6/2021**.

Determination

2. I have considered the application, the response and the submissions filed the parties. It is the correct position that **Order 1 Rule 10** allows the court to enjoin any necessary party at any stage of the proceedings in a suit either as plaintiff or as defendant; there is no room for an interested party.

3. In this suit I consider the application to be primarily based on the fact that the 1st defendant has upon assessment of the evidence of the County Land Registrar deemed it necessary to have other parties enjoined to the suit. The plaintiff has already closed his case. The suit is in its seventh year now. No proper explanation has been given as to why the proposed interested parties are necessary parties in this suit.

4. In this court's assessment of the pleadings the proposed parties do not amount to necessary parties for the purpose of being enjoined as defendants or interested parties and in any event this court has observed that the 1st defendant appears to have an ulterior motive in enjoining them.

5. Defendants are supposed to study their cases before the hearing and make major changes in their pleadings before hearing of the plaintiff's case is closed. Obviously, any application that may have the consequence of reopening the plaintiff's case has to be seriously scrutinized as it is likely to ambush the plaintiff or unnecessarily drag the parties back to the pleadings stage.

6. Further, if all further proceedings in a suit were to be conducted purely on the basis of what has transpired in court without regard to the fact that parties had all liberty to amend or adjust their pleadings before the hearing began little progress would be made in clearing the case backlog that is now holding back a huge chunk of the utilization and securitization potential of numerous parcels of land in this country.

7. The instant application is a hindrance to the expeditious conclusion of this suit. I find that the application dated **16/2/2021** lacks merit and the same is hereby dismissed with costs to the plaintiff. Hearing shall proceed on the basis of the parties now before the court.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 9TH DAY OF AUGUST, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.