REPUBLIC OF KENYA

IN THE ENVIRONEMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 56 OF 2019

HASSAN KIPTOO KOSGEY..... PLAINTIFF/APPLICANT

-vs-

SPRING WEST KENYA LTD.....DEFENDANT/RESPONDENT

RULING

[NOTICES OF MOTION DATED 21ST JANUARY, 2020 AND 17TH FEBRUARY, 2020]

1. Before the court are two applications by the plaintiff dated the 21st January 2020 and 17th February 2020. The application dated 21st January 2020 seeks for orders inter alia that;

(a) Spent

(b) The Defendant/Respondent be restrained from Evicting, destroying, demolishing properties, cutting down trees on the suit land namely L. R. No. 8508/2 pending the hearing and determination of the application and the main suit.

(c) That the court be pleased to re-issue the status quo on the parcel of land for purposes of preserving the suit land pending the hearing of the main suit.

(d) That costs of the application be provided for .

The application is supported by the affidavit sworn by Hassan Kiptoo Koskey on the 21st January, 2020. It is the plaintiff's case that he is the lawful owner of the L. R. NO. 8508/2, the suit land, that is 15 acres and a subdivision from L. R. NO. 8508. That he has been in peaceful occupation of the said land from 2001, but the defendant has threatened to evict him by continuing to destroy his buildings, structures, cutting down trees and ploughing, despite the court having issued an order of *status quo*.

2. The application is opposed by the defendant through the replying affidavit sworn by **Mahendra G. Patel**, a director with the defendant, on the 7th February, 2020. The defendant's case is that the status quo order earlier issued on the 29th April, 2019 was discharged on 25th July, 2019 for material non-disclosure. That the application is res judicata in view of the ruling delivered on the 25th July, 2019. That the defendant is the registered proprietor of the suit property, having acquired it from Elite Ventures Limited, who had bought it in a public auction conducted by Equity Bank in exercising its statutory power of sale. That the plaintiff not being the owner of the suit land, has no *locus standi* in this claim and the same should be struck for being a non-starter, frivolous, vexatious, misjoinder and an abuse of the court process.

3. The application dated 17th February, 2020 seeks the following orders:

(i) Spent

(ii) THAT leave be granted to the Plaintiff/Applicant to amend the Plaint as per the Draft Amended Plaint and the Defendant to file their respective response to the proposed Amended Plaint.

(iii) THAT an order do issue that Equity Bank (Kenya) Limited, Elite Ventures Limited, Highland Valuers, Purple Royal Investment and Soy Country Club (1987) Limited be enjoined in this suit as the 2nd, 3rd 4th 5th and 6th Defendants and the same be deemed as duly filed and served.

(iv) THAT costs be provided for.

The motion is based on the six **(6)** grounds on its face and supported by the affidavit sworn by **Hassan Kiptoo Koskey** on the 17th February, 2020. The plaintiff case is that he has discovered new facts that requires the joinder of the five named parties as the 2nd to the 6th defendants. That the said five parties are crucial as they participated in selling the suit land to the 1st defendant **(Spring West Kenya Ltd)**.

4. The defendant has opposed the said application via its replying affidavit sworn by **Mahendra G. Patel** on the 25th September, 2020. It is their case that the application is an afterthought calculated to defeat its defence that the plaint does not disclose a cause of action. That from the letter dated 19th December 2018, the plaintiff was aware that the defendant had acquired the suit land through a public auction, but chose not to enjoin the other parties when filing this suit. That the application should not be allowed as the plaintiff is using it to fish for causes of action so as to defeat the defendant's defence.

5. On the 28th September 2020**,** directions were taken that both applications be heard together through written submissions. The learned counsel for the plaintiff filed two written submissions dated the 21st October, 2020 in respect of each of the applications. That on their part, counsel for the defendant filed two submissions dated the 22nd April, 2020 in support of each of the applications. The submissions are as summarized here below;

(a) The counsel for the plaintiff has submitted that the sole intention of the first application is to safeguard the substratum of the suit, pending its hearing and determination which order would be to the benefit of all the parties. That in the unlikely event that the order preserving the suit property is not granted, the substratum of the suit will be defeated and the cause would just be an academic exercise as nothing prevents the Respondent from destroying the trees and/or disposing of the same to third parties to the detriment of the Applicant. That it is the Applicant's case that he purchased 15 acres curved out of the suit property in 20th October, 2001, and took immediate vacant possession. That the Applicant is categorical that he was never aware of any charge of the suit property to Equity Bank.

He further submitted that the Respondent in his pleadings and the replying affidavit has laid proprietary interest over the same parcel of land and there is nothing preventing it from evicting and/or completely wasting the suit property for its own benefit to the detriment of the Applicant. That the Respondent has disclosed that it is embarking on a process of putting up a project worth **Kshs.150,000,000/=** in the suit land as stated in **Paragraph 8 (d)** of the defence filed on **31.05.2019**, and that an order preserving the *status quo* is the only recourse that would protect the interest of all the parties as the court proceeds to hear the suit in full, so as to determine who between the Applicant and the Respondent is the rightful owner.

That in the event the orders sought are not granted, it would in essence be determining the matter summarily, and at the preliminary stage, without having even heard the parties or having the benefit to scrutinize the evidence which is yet to be presented before the court. The counsel cited the case of **Susan Nyambura Mwathi - vs- Duncan Kiria Kabete (2019) eKLR,** where the court held that;

'….. all in all, I find that the issues both parties raised need to be escalated to an oral hearing in court which will definitely make opposite findings. It will therefore, pending the hearing and determination of the main suit be necessary to preserve the suit property...'

He further cited the case of **Nooh Mohamed Janmohammed —vs- Kassam Ali Virji Madhani (1953)20 LRK,** where it was held that;

'... the purpose of temporary injunction is to preserve the status quo...'

The counsel cited the case of **Yego —vs- Tuiya & Another, (1986) KLR 726,** where it was held that;

'the status quo could be preserved was the status quo that existed before the illegal acts on the part of the Defendant ..'

The learned counsel urged the court to grant the orders sought so as to preserve the suit property from being wasted further by the respondent. That the court has the discretion to grant the orders sought and should thus exercise that discretion for the interest of justice.

(b) The learned counsel for the defendant submitted that the application dated the 21st January, 2020 is *res judicata* and in contravention of **Section 7 of the Civil Procedure Act**. That the Plaintiff had earlier moved the court through an application dated 25th April, 2019 for an order of injunction over the suit land. That the court issued ***exparte*** **orders to the effect that the status quo be maintained in respect of that parcel of land namely L. R. No. 8508/2 measuring 15 acres pending the hearing and determination of the application *inter-partes.*** That the defendant being aggrieved by the said orders filed an application dated 17th May, 2019 seeking to vacate the said orders due to non-disclosure of material facts. That the said application was heard and a ruling delivered discharging the status quo orders initially issued for material non-disclosure. That the substantive issue in the said application was status quo orders which was fully determined by this Court.

The counsel further submitted that this Court cannot sit on its own judgment, unless through a review. That if the Plaintiff was dissatisfied with the ruling, whereby the court found that the *status quo* was issued with material non-disclosure, then he should have preferred an appeal instead of another application seeking the same orders. The counsel cited the case of **Independent Electoral & Boundaries Commission vs. Maina Kiai & 5 Others [2017] eKLR**, in which the Court of Appeal held as follows:

"Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in distinctive but conjunctive terms:

(a) The suit or issue was directly and subsequently in issue in the former suit.

(b) The former suit was between the same parties or parties under whom they or any of their claim.

(c) Those parties were litigating under the same title.

(d) The issue was heard and determined in the former suit.

(e) The court that formerly heard and determined the issue was competent to try the subsequent suit or suit in which the issue is raised…."

That the court further explained the role of the doctrine as follows:

"The rule or doctrine of res judicata serves the solitary aim of bringing finality to litigation and affords parties closure and respite from the spetre of being vexed, haunted and bounded by issues and suits that have already been determined by a competent court. It is designed as pragmatic and common sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleadings hoping, by a multiplicity of suits and flora, to obtain at last, outcomes favourable to themselves. Without it there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundation of res judicata thus rest in the public interest for swift, sure and certain justice. "

The Counsel continued to submit that the plaintiff should not be allowed to evade the doctrine of *res judicata* by merely changing the grammatical style of the orders sought in the current application while knowing very well it is the same prayers that were discharged. The counsel urged the court to dismiss the application dated 21st January, 2020 with costs to the Defendant.

6. That having perused the application herein, the supporting affidavit, the replying affidavit and parties' submissions, the major issues for determination are as follows;

(a) Whether the plaintiff has made a good case for the grant of the orders sought, and

(b) Whether the issue in application dated the 21st January 2020 is *res judicata.*

(c) Who pays the cost of the applications?

7. That I have considered the prayers in the application, supporting and replying affidavits, submissions, superior courts decisions cited therein and come to the following findings;

(a) That the plaintiff has argued the court to issue *status quo* order as the defendant has interfered with the suit property to his detriment, and further indicated that it is in the process of setting up a project of **Ksh.150,000,000/=** as stated in **Paragraph 8(d)** of his statement of defence. The defendant has on the other hand pointed out that the application is ***res judicata*** as the court has already dealt with a similar application and made a determination. The doctrine of ***res judicata*** is set out in the **Civil Procedure Act** at **Section 7** as follows:

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them can claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

That it is clear that res judicata doctrine applies in instances where a party raises issues in a subsequent suit, which has already been determined or ought to have been raised in the previous suit between the same parties. That applying the foregoing provision to the present case, I note that the gist of the application dated the 21st January, 2020 revolves around the preservatory order of *status quo*. The question that demands to be answered is whether that issue has already been heard and determined by a court of competent jurisdiction? It is not disputed that the plaintiff and defendant had filed the previous applications dated the 25th April, 2019 and 17th may 2019 for injunction and discharge of status quo order respectively. That the court heard both parties and delivered a ruling on 25th July, 2019. That at **pages 6 and 7** of the said ruling, the court held thus:

"……I have considered the application and do find that the extract of register does not show that the said Joseph Wamang'oli was ever the proprietor of the suit property and therefore transferred the property to the plaintiff. The sale against [sic] between Soy County Club 1987 Ltd and the plaintiff is not sufficient to sustain the order of the status quo issued by this court. Had the court been aware of the register extract, it could not have issued the order of status quo. I do find that the plaintiff did not disclose to court that the property was not registered in his own names. I do find that the order of status quo was issued with material non-disclosure and the same is hereby discharged…….":

The provision of **section 7 of the Civil Procedure Act, chapter 21 of the Laws of Kenya** implies that for a matter to be *res judicata*, the issue in the subsequent matter must be similar to those which were previously in dispute between the same parties, and which have already been determined on merits by a court of competent jurisdiction. The court in the English case of; ***HENDERSON VS HENDERSON (1843-60) ALL E.R.378***, observed thus:

"…where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."

(b) The doctrine of *res-judicata* is founded on public policy and is aimed at achieving two objectives namely, that there must be finality to litigation, and that an individual should not be harassed twice with the same account of litigation. This was the position in the Supreme Court's decision in the case of **Kenya Commercial Bank Limited vs Muiri Coffee Estate Limited & Another [2016] eKLR,** where it was stated;

"….30. Expounding further on the essence of the doctrine, this Court in John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR pronounced itself as follows:

"The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably."

(c) That in the case before me, the respondent's stand is that the application dated the 21st January, 2020 has raised similar issues to those which had been considered and determined in the ruling dated 25th July, 2019. That the applicant has been silent on the said issue, only urging the court that if the orders sought are not granted, the substratum of litigation stands to be wasted. That the test for determining the application of the doctrine of *res-judicata* in any given case is spelt out under ***Section 7* of the *Civil Procedure Act***. That in the case of **Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR**, cited by the Respondent, the Supreme Court considered the said provision and held that all the elements outlined therein must be satisfied conjunctively for the doctrine to be invoked. That from the foregoing it is crystal clear that this court had already addressed and made a determination with respect to whether or not the plaintiff is entitled to an order of ***status quo*** **(injunction or preservatory order)** during the hearing of the earlier applications dated the 25th April, 2019 and 17th May, 2019, and the ruling rendered on the 25th July, 2019. That in coming to this finding, I am fortified by the court's sentiments in ***Suleiman Said Shabhal vs Independent Electoral & Boundaries Commission & 3 Others [2014] eKLR,*** where it was held;

"To constitute res judicata, there must be adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy."

(d) That I therefore, entirely agree with the submission of the defendant's counsel that the plaintiff ought to have moved the court for a review of the court's ruling, or appeal against the same rather than filing an application seeking for the order that the court had already made a determination on, while well aware that what he was asking this court to do is tantamount to siting as an appellate court to overturn its own ruling, which is impossible.

8.(a) That in respect of the application dated the 17th February 2020, in which the plaintiff seeks to amend the Plaint to include five new parties to wit, **Equity Bank, Elite Ventures Ltd, Highland Valuers, Purple Royal Investment and Soy County Club (1987) Ltd as the 2nd, 3rd, 4th, 5th and 6th Defendants** respectively, the learned counsel submitted that the parties are necessary parties to this suit due to their involvement with the suit land, and their joinder will assist the court arrive at conclusive determination as to the rightful owner of the suit parcel of land. That the defendant has at paragraph 6 of his statement of defence, detailed how it purchased the suit land from a third party known as **Elite Ventures**. That the property had allegedly been charged to **Equity Bank** whom supposedly, in execution of its statutory power of sale, sold it to the **Elite Ventures,** from whom the defendant purchased it. That according to the defendant's narrative, the property had been charged in favour of Soy County Club, who had failed to service the loan. That the bone of contention regarding the charged property is that the applicant is categorical that the property he purchased was never charged . That it is therefore necessary those other parties to be enjoined to shed light as to the history surrounding the suit land, and for the court to eventually determine the rightful and/or legal owner. The counsel further submitted that granting leave to amend pleadings is a discretion the court can exercise at any stage of the proceedings, so long as the application is brought before the hearing commences. That the Respondent cannot suffer any injustice as he would have ample time to equally file his response to the issues raised. That the matter has not proceeded to hearing and the defendant does not stand to be prejudiced in any way. The counsel cited the case of **Ochieng and others -vs- First National Bank of Chicago Civil Appeal No. 147 of 1991;** where the principles under which a court can grant leave to amend pleadings were highlighted as follows;

(a) The power of the court to allow amendments is intended to determine the true substantive merits of the case.

(b) The amendments should be timeously applied for.

(c) Power to amend can be exercised by the court at any stage of the proceedings.

(d) That as a general rule, however late the amendment is sought to be made, it should be allowed if made in good faith.

(e) The Plaintiff will not be allowed to reframe his case or his claim if by an amendment of the Plaint the Defendant would be deprived of his right to rely on Limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.

He further cited the case of **J.C Patel —vs- D. Joshi 1952 19 EACA12**, where the court held that the rule of conduct of the court in such a case is that;

"However, negligent or careless may have been the first omission and however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side..."

The counsel submitted that the application has been brought promptly and without any undue delay, and urged the court to allow the Applicant to amend the pleadings to enable the Court to arrive at a plausible determination.

(b) The learned counsel for the defendant submitted in opposition to the application dated 17th February 2020, that the general rule is that amendments to pleadings should not be allowed if it causes injustice to the other side, and secondly, that courts will not permit an amendment that is inconsistent with original pleadings, and that which entirely alters the nature of the defence or plaint. The counsel relied on the case of ***Abdul Karim Khan Vs Mohammed Roshan (1965) E.A. (C.A) quoted in Kisumu CACA No. 115 of 2016 Catherine Koriko & 3 Others vs. Evaline Rosa,*** where the court stated;

"The court will not permit an amendment that is inconsistent with original pleading and which entirely alters the nature of the defence or plaint."

That the counsel further submitted that the application herein is an afterthought and has been brought in bad faith with the intentions of defeating the defendant's defence that the plaint did not disclose a cause of action against it. That even before the Plaintiff instituted this suit, it is clear that he was aware the defendant purchased the property in a public auction. That the plaintiff knew the purpose of the auction by the bank, the parties involved and the person who had charged the suit property. That it therefore beats logic on why the plaintiff chose not to sue all the parties at the time of filing suit, yet all information was available to him. That it also beats logic that the plaintiff had to wait until the defendant had raised those issues which were primarily within his knowledge only for him to apply to amend the Plaint so as to correct and patch up the defects in his pleadings. The counsel further submitted that it is unconscionable to allow the Plaintiff to fish for cause of action in the manner he is suggesting, as if allowed to do so, it will defeat the Defendant's case as put forth in the Defendants defence. The counsel submitted that it is not clear what cause of action the plaintiff claims against the intended parties is founded on, as he has not laid down the historical basis of any known manner of ownership of the suit land, save for the allegations of mere occupations. That an indolent and negligent pleader who intends to ***"cause grievous damage to the Plaint"*** after the same has been raised by the defendant should not be entertained in whatsoever manner, and that the application should be dismissed with costs to the defendant.

9. That having considered the grounds on the application, affidavit evidence by both parties, the written submissions, the issues for the court's determination are as follows;

(a) Whether the application dated the 17th February 2020 has met the threshold as to warrant the amendment of plaint as sought. Or conversely put,

(b) Whether the five intended defendants are necessary parties for the issues herein to be conclusively determined.

(c) Who pays the cost of the application?

10. That upon considering the grounds on the motion, the two parties' affidavit evidence, the learned counsel's submissions, and the superior courts decisions therein, I have come to the following determinations;

(a) That the application has been premised on the provisions of **Sections 1, 1A, and 3(e) of the Civil Procedure Act and Order 1 Rule 10 (2)** as well as **Order 8 Rule 3 of the Civil Procedure Rules.** The primary issue for determination as stated above is whether the **five (5)** new parties to wit, **Equity Bank, Elite Ventures Ltd, Highland Valuers, Purple Royal Investment and Soy County Club (1987) Ltd should be enjoined as the 2nd, 3rd, 4th, 5th and 6th Defendants respectively** in this suit. That **Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010** provides that courts can enjoin a party, whose presence may be necessary to enable the court to effectually and completely adjudicate upon and settle the questions in the suit. That it is upon the applicant to demonstrate that the parties that he seeks to enjoin have identifiable interest in the subject matter of the litigation, and that they are necessary parties whose presence is required to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. That position was spelt out in the case of **LUCY NUNGARI NGIGI & 128 OTHERS V NATIONAL BANK OF KENYA LIMITED & ANOTHER [2015] eKLR**, where the court stated as follows when considering whether to grant leave to enjoin a party:

"Joinder of parties is governed by Order 1 of the Civil Procedure Rules. In law, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally; or in the alternative, where if such persons brought separate suits, any common question of law or fact would arise. See also Order 7 Rule 9 of the Civil Procedure Rules. The court may even in its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary

delay or costs on the parties in the suit. In other word, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties."

(b) That in the instant case, the Plaintiff has submitted that the defendant has at **Paragraph 6 of his Statement of Defence** adversely mentioned how it allegedly acquired the suit land, and further averred that it purchased the suit land from a third party known as **Elite Ventures**, the proposed 2nd defendant; that the property had allegedly been charged to **Equity Bank,** who supposedly in execution of its statutory power of sell sold it to the **Elite Ventures**, and whom the defendant supposedly purchased it from. That according to the defendant, the property had been charged in favour of **Soy County Club, the proposed 4th defendant,** who allegedly failed to service the loan. That the bone of contention regards the charged property as the plaintiff position is that the suit property was never charged when he purchased it. That it is the plaintiff's case that it is necessary for the five intended parties to be brought on board to shed light as to the history surrounding this land, and to effectually determine the rightful and/or legal owner. He further submitted that granting leave to amend pleadings is a discretion the court can exercise at any stage of the proceedings, so long as the application is brought before the hearing commences. That I agree with the plaintiff that the powers of the court to grant leave to a party to bring on board other relevant parties is a discretionary one, and ought to be exercised in the interest of justice. That power can even be exercised by the court on its own volition as confirmed in the case of **LUCY NUNGARI NGIGI & 128 OTHERS V NATIONAL BANK OF KENYA LIMITED & ANOTHER [2015] eKLR, (supra).**

(c) That in the case of **CIVICON LIMITED V. KIVUWATT LIMITED & 2 OTHERS [2015] eKLR**, the court held as follows:

"...Again, the power given under the rules is discretionary which discretion must of necessity be exercised judicially. The objective of these rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party and should be enjoined.

From the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order 1 Rule 10(2) bearing in mind the unique circumstances of each case with regard to the necessity of the party, in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit, and the interest need not be the kind that must succeed at the end of the trial…."

Further, the Supreme Court in the case of; **PETER GICHUKI KING'ARA V INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION & 2 OTHERS [2014] eKLR** made the following observation as regards the exercise of judicial discretion:

"Judicial discretion is always exercised judiciously and for reasons which are stated. The aims that should be encapsulated in the reasons given for the refusal to exercise discretion are meant to further the cause of justice, and to prevent the abuse of the court process. Judicial discretion is never exercised capriciously or whimsically."

(d) That though the defendant has vehemently opposed the application terming it a fishing expedition by the plaintiff, who only acted after it filed the statement of defence and that the plaintiff had deliberately chosen to omit the proposed defendants at the time of filing the plaint, it is my considered finding, based on the nature of the dispute between the parties, and the fact that the origin of the title to the suit land is in dispute, that it is prudent to bring all relevant parties on board, so as to have the issue of the legal claim to the suit land effectually and completely resolved. That allowing the application will not really defeat the defendant's defence or place it at a prejudiced position, as it will have the opportunity to respond to the amended plaint. That however, as the available evidence shows that the plaintiff knew of the process through which the Defendant acquired the land even before filing the suit, but for undisclosed reasons left out the other players that he now want to be enjoined, then he should pay the defendant's costs, the provision of **section 27 of the Civil Procedure Act** notwithstanding.

10. That flowing from the foregoing, I find and order as follows;

(a) That the plaintiff's notice of motion dated the 21st January, 2020 is without merit and is hereby dismissed with costs.

*(b) That the plaintiff's notice of motion dated the 17th February, 2020 has merit and I allow it in terms of **prayers 2** and **3** with costs to the defendant nevertheless.*

*(c) That the plaintiff do file and serve the amended plaint within fourteen **[14]** days from the date of this ruling.*

Orders accordingly.

DATED AND DELIVERED VIRTUALLY THIS 22ND DAY OF SEPTEMBER, 2021.

S. M. KIBUNJA

ENVIRONMENT AND LAND COURT JUDGE

IN THE PRESENCE OF;

PLAINTIFF: ABSENT

DEFENDANT: ABSENT

COUNSEL: M/S KIBICHY FOR THE PLAINTIFF

CHRISTINE: COURT ASSISTANT.