



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT BUNGOMA

ELC CASE NO. 120 OF 2011

(Formerly BUSIA HCCC No. 11 OF 2011)

MUNICIPAL COUNCIL OF BUNGOMA.....PLAINTIFF

VERSUS

KENYA NATIONAL TRADING CORPORATION.....DEFENDANT

R U L I N G

By an application dated 21st June 2021, Counsel for the defendant sought an order to enjoin **KAKIS PROPERTIES LTD** “*as a party to this suit.*” The defendant did not however indicate in what capacity they wanted the said **KAKIS PROPERTIES LTD** to be enjoined in this suit.

A consent order was however recorded on 12th October 2021 before the Deputy Registrar allowing that application. In the supporting affidavit of Counsel for the defendant **MR MAINA NYABUTI** dated 21st June 2021, it is indicated that the **Court should determine** the capacity in which the said **KAKIS PROPERTIES LTD** should be enjoined.

Whereas the Court has powers under **Order 1 Rule 10(2)** of the **Civil Procedure Rules** to order the joinder of a party on its own motion, in a situation such as this where one party moves the Court for joinder, it is really for the party moving the Court to determine in what capacity the party is to be enjoined in any proceedings. This is because, it is the party moving the Court who knows why he requires the new party to be enjoined and what claim he seeks against the new party. The Court cannot make that decision on behalf of the party making the application for joinder.

Secondly, the listing of this matter today for directions is pre – mature. Directions can only be taken once the new party has been joined in the proceedings.

In the circumstances, the consent order dated 12th October 2021 allowing the application dated 21st June 2021 is hereby set aside suo moto.

The defendant may file a fresh application.

BOAZ N. OLAO.

J U D G E

6TH DECEMBER 2021.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUNGOMA THIS 6TH DAY OF DECEMBER 2021.

Mr Murunga for plaintiff – present

Mr Maina for defendant – present

Court Assistant - Joy – present

BOAZ N. OLAO.

J U D G E

6TH DECEMBER 2021.