



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 77 OF 2017**

**GEORGE DZOMBO KATANA**

**DAVISON DZOMBO KATANA.....PLAINTIFFS**

**VERSUS**

**SAMUEL DZOMBO CHIVATSI.....DEFENDANT**

**RULING**

1. By this Notice of Motion dated 12<sup>th</sup> November 2018, the Plaintiffs pray for leave to be granted to them to enjoin one Alfred Riko Mwalenga to the suit as a Co-Plaintiff and that the Plaintiff be amended accordingly.

2. The application which is supported by an affidavit sworn by the 1<sup>st</sup> Plaintiff George Dzombo Katana is premised on the grounds listed on the body of the application inter alia as follows:-

**i. That this suit relates to the issue of ownership of land;**

**ii. That the Defendant fraudulently caused the suit property being Kilifi/Kinunguna/39 to be sub divided into two portions namely Kilifi/Kinunguna/315 and Kilifi/Kinunguna/316;**

**iii. That the said Alfred Riko Mwalenga is a necessary party to this suit as Co-Plaintiff as the Defendant had sold and executed a transfer in his favour being the portion now known as Kilifi/Kinunguna/315;**

**iv. That the said Alfred Riko Mwalenga claims ownership of the said parcel of land and is in possession of the title documents.**

3. The application is opposed. In a Replying Affidavit sworn and filed herein on 21<sup>st</sup> January 2019, by the Defendant's Advocate Benedict Wambua Kenzi, the Defendant avers that the application as filed is frivolous, vexatious and otherwise an abuse of the Court process.

4. The Defendant avers that it is inconceivable that the Plaintiffs seek to join another Party as a Plaintiff and that given that the Defendant already concedes that the said Alfred Riko Mwalenga is the registered proprietor of LR No. Kilifi/Kinunguna/315, it would only make sense for him to be enjoined as a Defendant.

5. I have perused the application and the response thereto. Rule 10(2) of Order 1 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.”***

6. Arising from the foregoing, joinder of parties 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.

7. 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; where it is unnecessary or will just occasion unnecessary delay or costs on the parties in the suit.

8. In the matter before me, the Plaintiffs seek to enjoin Alfred Riko Mwalenga to this suit as a Co-Plaintiff on the basis that the Defendant had sold LR No. Kilifi/Kinunguna/315 to him. At paragraph 5 and 6 of the Supporting Affidavit of the 1<sup>st</sup> Plaintiff he states as follows:-

**5. That I am informed by one Alfred Riko Mwalenga and which information I verily believe to be true that on or around 28<sup>th</sup> October 2006, the defendant entered into an agreement for sale of land for Title No. Kilifi/Kinunguna/315 with him for Kshs 250,000/- and executed a transfer in his favour.....**

**6. That I am further informed by the said Alfred Riko Mwalenga and which I verily believe to be true that he claims ownership of the suit property having successfully obtained a title document for Plot No. Kilifi/Kinunguna/315...”**

9. It was not clear to me from the Supporting Affidavit whether the said Alfred was aware of and/or had given his approval to be enjoined in these proceedings. Neither was it clear to me why, if he was aware of the proceedings he did not make the application himself.

10. What was clear to me is the fact that the said Alfred Riko Mwalenga would have no reason to bring a claim against the Defendant. I say so because at paragraph 9 of his Statement of Defence dated 27<sup>th</sup> July 2018, the Defendant pleads as follows:-

**“9. The Defendant further avers that he sub-divided again his parcel of land Kilifi/Kinunguna/39 to two portions Kilifi/Kinunguna/315 and 316. The Defendant avers that he has sold portion Kilifi/Kinunguna/315 to one Riko Mwalenga and him he occupies parcel of land Kilifi/Kinunguna/316.”**

11. Given that the Defendant himself easily concedes that he sold the land to him, it is difficult to see why the Plaintiffs want the said Alfred Riko Mwalenga to join them in suing the Defendant.

12. In the circumstances of this case, I am in agreement with the Defendant that the Plaintiffs’ application is totally misconceived and a waste of this Court’s time. It is dismissed with costs to the Defendants

**Dated, signed and delivered at Malindi this 23<sup>rd</sup> day of January, 2020.**

**J.O. OLOLA**

**JUDGE**