

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HCC NO. 155 OF 2019 (O.S.)

WILSON MACHARIA KABUGI.....PLAINTIFF/RESPONDENT

VERSUS

EQUITY BANK LIMITED.....DEFENDANT/APPLICANT

RULING

The plaintiff sued the defendant by way of Originating Summons relating to his bank account which had been frozen and made inaccessible. By a Notice of Motion dated 25th September, 2020 the defendant moved the court to have the proposed 2nd defendant be joined in the suit for reasons set out on the face of the application and the affidavit sworn by Kariuki Kingori, the Manager Legal Services of the defendant. The application is opposed and parties have filed their respective submissions.

Order 1 Rule 3 of the Civil Procedure Rules, which is one of the cited provisions, addresses the joinder of the proposed defendants and rule 10 of the same order provides that the court has the discretion to join or removed any party to the proceedings. This Order may be invoked at any stage before the proceedings have been finally disposed of and nothing more remains to be done. – see **JMK vs. MWM & Another (2015) e KLR.**

Decided cases have demonstrated that such a step which may require an amendment, is to facilitate the just determination of the real dispute between the parties. A party opposing such an application has the duty to demonstrate that prejudice is likely to occur if the order is given.

Without delving into the issues in dispute, I am persuaded that it is necessary to join the 2nd defendant and that no prejudice shall be occasioned to the plaintiff. In so saying I believe costs shall be saved and an opportunity shall present itself to resolve issues in one suit thereby saving time.

The application is therefore allowed. The 2nd defendant, now joined, shall be served with the pleadings by the 1st defendant. The 2nd defendant shall enter appearance and file a statement of defence within 15 days from the date of service. Costs in the cause.

Dated and delivered at Nairobi this 15th day of October, 2020.

A.MBOGHOLI MSAGHA

JUDGE