



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO 49 OF 2018

**MUNTELEU MARDADI SARINKE (Suing as a legal representative of the
estate of NKUTOTO ENE SARINKE – Deceased)PLAINTIFF**

VERSUS

LAMO OLE MARDADI SARINKE.....1ST DEFENDANT

SANA EK LAMO SARINKE.....2ND DEFENDANT

EVANS MBOTO OMBUL.....3RD DEFENDANT

LANDS REGISTRAR, KAJIADO.....4TH DEFENDANT

ATTORNEY GENERAL.....5TH DEFENDANT

RULING

What is before Court for determination is the Plaintiff's Notice of Motion application dated the 10th December, 2018 brought pursuant to Order 8 Rule 3; Order 1 Rule 10 (2) of the Civil Procedure Rules; Section 28 (3) of the Limitation of Actions Act; Section 1A (1), Section 3A of the Civil Procedure Rules. The Plaintiff seeks leave to amend his Plaint to include YIAI ENE MARDADI and MORISIET ENE MESENO as Plaintiffs. The Plaintiff is further seeking leave of court to enlarge time for filing this suit out of time in respect of the new Plaintiffs YIAI ENE MARDADI and MORISIET ENE MESENO. The Application is premised on the summarized grounds that the new plaintiffs have a stake on suit land and can be able to assert their rights. The Defendants will suffer no prejudice if the application is allowed. It is supported by the affidavit of MUNTULEU MARDADI SARINKE who deposes that on 10th April, 2018 pursuant to leave of the Court he filed this suit. He confirms that YIAI ENE MARDADI and MORISIET ENE MESENO who are his sisters are listed as witnesses. Further, that they are also aggrieved by the conduct of the Defendants herein and are desirous of asserting their rights in respect to the suit land.

The 3rd, 4th and 5th Defendants did not oppose the application. The 1st and 2nd Defendants opposed the application and filed a replying affidavit sworn by the 1st Defendant LAMO OLE MARIDADI who deposes that MUNTELEU MARDADI SARINKE, YIAI ENE MARDADI and MORISIET ENE MESENO are his siblings. He explains that before the institution of this suit, the Plaintiff herein moved the High Court in Kajiado through succession cause No. 75 of 2015 filed together with an application seeking conservatory orders on the basis that the suit premises was an estate land. Further, the court declined to issue conservatory orders but issued joint letters of administration ad litem to the Applicant and himself. He insists he legally acquired land parcel number Kajiado/ Il damat/313 from Oloiyangalani Group Ranch in the 1990s and a Certificate of Title was issued to him on 3rd January, 1995. Further, that his brother the Plaintiff/ Applicant was allocated land reference number Kajiado/ Ildamat/ 312 which he sold. He contends that the Plaintiff's scheme to introduce their sisters as co – Plaintiffs in this matter is made in bad faith for reasons they have been married even before the subdivisions of the Group ranch and settled in their respective husband's land. He avers that the persons intended to be enjoined as co Plaintiffs have no Letters of Administration and have been caught by the doctrine of laches since it is 25 years since he was allocated the suit premises. He reiterates that YIAI ENE MARDADI and MORISIET ENE MESENO are already listed as witnesses and their interest can be catered for by the Plaintiff. Further, that parties have already complied with Order 11 of the Civil Procedure Rules and this application is a waste of judicious time. He states that the claim advanced by the Applicant herein is malicious, wrongful and baseless.

The Applicant filed a further affidavit where he deposes that the 1st Defendant has not given any legally feasible reason why the instant application should not be allowed. He explains that there is no prejudice the 1st and 2nd Defendants will suffer if the application is allowed. Further, there is no necessity in law for Letters of Administration Ad Litem for the new Plaintiffs to come on board an already existing suit.

The Plaintiff, 1st and 2nd Defendants filed their submissions to canvass the instant application.

Analysis and Determination

Upon consideration of the Application dated the 10th December, 2018 including the parties' affidavits and submissions the only issue for determination is whether YIAI ENE SARINKE and MORISIET ENE MURUNYA should be enjoined in this suit.

Order 1 Rule 1 of the **Civil Procedure Rules 2010** provides that:

“All persons may be joined in one suit as plaintiffs 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”

While **Order 1 Rule 10(2)** further provides:

“The court may at any stage of the proceedings, either upon or without the application of either party order that the name of any person who ought to be 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.”

I note the relevance of the intended Plaintiffs' in this suit was clearly indicated in paragraphs 7, 8 and 9 of the Plaintiff. The 1st and 2nd Defendants insist that since the intended Plaintiffs are witnesses, they can ventilate their issues as such. Further, that they do not have locus as they needed to apply for Grant of Letters of Administration Ad Litem to join on the suit. I have perused the Grant Ad Litem that was issued to the Plaintiff and 1st Defendant and I note it was issued in respect of the estate of Nkutoto Ene Sarinke which estate forms part of the dispute herein. I opine that since the Applicants are beneficiaries of the deceased estate which is already being represented herein, and noting that the Plaintiff is suing on behalf of the estate where Applicants are already witnesses, their interests are well catered for. I hence concur with defendants that their interests are catered for and do not foresee any prejudice they will suffer if they are not enjoined in this suit. Since the parties had already complied with Order 11, I direct that the matter be set down for hearing.

In the circumstance, I will disallow the instant application.

Costs will be in the cause

Dated and delivered in Kajiado this 10th day of March 2020.

CHRISTINE OCHIENG

JUDGE

IN THE PRESENCE OF:

Musyoka for the plaintiff

Larabi for 1st and 2nd defendants

Court Assistant- Mpoye