



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 396 OF 2017

REMTONE HOLDING LIMITED.....PLAINTIFF

VERSUS

MASHUKUR ENTERPRISES LIMITED.....1ST DEFENDANT

NAKURU DISTRICT LAND REGISTRAR.....2ND DEFENDANT

RULING

1. By Notice of Motion dated 6th February 2019, Rukima Estate Limited seeks to be enjoined in this suit as the 3rd defendant. The application is supported by an affidavit sworn by Hon. Onesmus Kimani Ngunjiri, a director of the applicant. He deposed that the applicant has recently become aware of this suit which concerns the parcel of land known as Nakuru Municipality Block 4/127. He added that the applicant was issued with an allotment letter on 6th July 2015 and a lease on 28th September 2018 in respect of the said property and that the applicant is therefore a necessary party.

2. The plaintiff opposed the application and argued that the application ought to have been brought by way of chamber summons and not a notice of motion and further that the provisions of Order 1 Rule 10 (2) require that an application to add a party to a suit be made by a party already in the suit. It was further argued that the applicant has no valid claim over the suit property and is thus not a necessary party. The plaintiff cited the cases of **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 6 others [2013] eKLR** and **Joseph Njau Kingori v Robert Maina Chege & 3 others [2002] eKLR**.

3. The first defendant associated itself with the position taken by the plaintiff and did not file any submissions. Counsel for the second defendant indicated that he does not oppose the application.

4. I have considered the application and the submissions. **Order 1 Rule 10 (2)** of the **Civil Procedure Rules** provides:

(2) 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.

5. Also relevant to the application before the court is **Order 1 Rule 3** which provides:

All persons may be joined as defendants against 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 separate suits were brought against such persons any common question of law or fact would arise.

6. The applicant seeks to join this suit as an additional defendant on the ground that it is a necessary party. A perusal of the documents exhibited by the applicant shows that it has some claim to an interest in the suit property herein. Under **Order 1 Rule 10 (2)** the application for joinder can be made by either party but the court can also order joinder on its own motion. In other words, the initiative to add a new party is not exclusively that of the existing parties. I see nothing in the law that stops a third party from seeking joinder. The Court of Appeal stated as follows in **J M K vs M W M & Another [2015] eKLR** in regard to **Order 1 Rule 10 (2)**:

Commenting on this provision, the learned authors of Sarkar's Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887), state that:

"The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties"

... In the same vein, the Court of Appeal of Tanzania, while considering the equivalent of Order 1 Rule 10 (2) of our Civil Procedure Rules, in Tang Gas Distributors Ltd vs Said & Others [2014] EA 448, stated that the power of the court to add a party to proceedings can be exercised at any stage of the proceedings; that a party can be joined even without applying; that the joinder may be done either before, or during the trial; that it can be done even after judgment where damages are yet to be assessed; that it is only when a suit or proceeding has been finally disposed of and there is nothing more to be done that the rule becomes inapplicable; and that a party can even be added at the appellate stage.

7. Owing to its claim to an interest in the suit property herein, I am persuaded that the applicant is a person whose presence before the court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in this suit. I further note that this matter is still at the preliminary stage and that the hearing of the suit has not yet commenced.

8. The plaintiff's protestations that the application ought to have been brought by way of chamber summons and not a notice of motion are simply answered by the fact that no prejudice will be occasioned owing to that failure to follow a procedural requirement. The court has a duty to render substantive justice. See Martha Wangari Karua v Independent Electoral & Boundaries Commission & 3 others [2018] eKLR.

9. In view of the foregoing discussion, I find merit in the application. I therefore make the following orders:

a) Rukima Estate Limited is hereby joined to this suit as 3rd defendant.

b) The plaintiff to file and serve an amended plaint to reflect the joinder within 14 (fourteen) days from the date of delivery of this ruling.

c) The defendants to file and serve defence or amended defence as the case may be within 14 (fourteen) days of service of the amended plaint.

d) Costs in the cause.

Dated, signed and delivered in open court at Nakuru this 3rd day of March 2020.

D. O. OHUNGO

JUDGE

In the presence of:

Ms Wangari for applicant

Mr Kibet for plaintiff/respondent

No appearance for the 1st defendant/respondent

No appearance for the 2nd defendant/respondent

Court Assistants: Beatrice & Lotkomoi