



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 17 OF 2019

KAREN ENTERPRISES LIMITED.....-PLAINTIFF

VERSUS

LAWRENCE MUSANGO OKECH.....1ST DEFENDANT

PETER OPIYO.....2ND DEFENDANT

JOYCE WANJAWA.....3RD DEFENDANT

MICHAEL ODERA OTOM.....4TH DEFENDANT

RULING

The Application is dated 31st July, 2019. The defendant prays that the Honourable court be pleased to grant leave for the defendant herein to amend his defence. The amended defence be deemed duly filed and served upon the plaintiff herein. The amended defence annexed hereto be treated as the defendants amended defence and counterclaim and the same be deemed as having been duly filed upon payment of the court requisite fee. That Michael Odera Otom be joined as the 4th defendant herein. That the cost of this application be provided for. The application is based on grounds that that Michael Odera Otom has interest in the suit land being the administrator of the estate of Thomas Otom Agulo (deceased). That the amendment will help in resolving the issues in controversy. That the amendment is required to deal with the issues. That the amendment will not in any way prejudice the plaintiff herein or occasion any injustice. That it is in the interest of justice that the amendment be allowed.

The defendant seeking to join the 4th defendant as the administrator of the estate of the late Thomas Otom Agulo and has beneficial interest in the suit property. It was alleged that Michael Odera Otom's father was Thomas Otom Agulo was at material times the proprietor of the parcel of land measuring 25 hectares. It is alleged that the land irregularly acquired.

He traced the lineage of his father and their occupation of the suit property and claims that the land was not compulsorily acquired.

The plaintiff filed grounds of opposition stating that he proposed 4th defendant is the plaintiff in Kisumu Environment and Land case number 894 of 2015 formerly Kisumu HCCC No. 36 of 2009. The plaintiff is the 3rd defendant in the suit.

The plaintiff further stated that In the other case the proposed 4th defendant is being exposed as having irregularly sought and obtained orders from the National Land Commission (hereinafter "the NLC") in regard to the suit property without disclosing to the NLC that he had instituted the other case thereby making his complaint unsuitable for consideration by the NLC and without informing the court of his initiation of proceedings replicating his claim before the NLC in defiance of the court's jurisdiction. This is now an issue in the other case and the basis for additional relief sought by the 3rd defendant therein by way of counterclaim. The application is therefore clearly intended to facilitate the joinder of the proposed 4th defendant as a defendant and counterclaimant in this suit so that once again he is able to dupe the court by litigating 'afresh' without disclosing the existence of the other case and the difficulties he faces therein for abusing the court process as aforesaid.

The defendants' application is in the circumstances an abuse of the process of the court and ought to be dismissed with costs. The 1st defendant claims that parcel number I.R 67384 and land reference number 16345 belonged to his grandfather Joshua Agulo Sule, deceased. It was unregistered at the time. He claims that it was illegally acquired and registered as I.R 96243 and I.R 67348 and was later sub-divided to create LR No.16345, 16344, 15300, 15299 and 16346.

I have considered the application and the reply by the respondent and I have called for the file number 894 of 2015 between Michael Odera

Otom and the plaintiff respondent and do find that allowing the application by the 1st defendant is likely to put this court in an embarrassment as the subject matter is the same and the parties are the same save that the 1ST defendant is not a party in 894 of 2015. This is a matter that if not properly administered will lead to prejudice and abuse of court process. Parties to take a mention date for purposes of directions. Application is declined costs in the cause. Orders accordingly.

DATED, DELIVERED and SIGNED THIS **12th DAY OF MAY, 2020.**

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

This judgment is hereby delivered to the parties by electronic mail due to the measures restricting court operations due to COVID -19 pandemic and in light of directions issued by the Honourable Chief Justice and with the consent of the parties.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE