



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO . 169 OF 2014

DAVID A LANGAT.....PLAINTIFF

VERSUS

RUEBEN YEGON1ST DEFENDANT

ARAP SIGIRAI.....2ND DEFENDANT

RUSI LANGAT.....3RD DEFENDANT

RULING

(Application to amend defence to include counterclaim and other parties as defendants; limb of application seeking joinder of other defendants disallowed for plaintiff has not made any claims against them and neither has the defendant in his counterclaim; the persons instead to be enjoined as interested parties; boundary dispute; order for surveyor to visit land and make a report)

The application before me is that dated 22 January 2015 filed by the defendant. The application seeks the following orders :-

(a) *spent ...*

(b) *That pending the hearing hereof, the respondent be restrained from interfering with the use of parcel No. Nakuru/Sotik Settlement Scheme/1016 or harassing him through the Police or any other individual.*

(c) *That the applicant be granted leave to amend the defence to include a counterclaim and two other parties.*

The application is based on various grounds, inter alia, that the applicant is proprietor of the land parcel Nakuru/Tinet/Sotik Settlement Scheme/1016 which borders the respondent's (plaintiff's) parcel No. Nakuru/Tinet/ Sotik Settlement Scheme/1017; that the respondent alleges that the defendant has encroached into his land; that the defendant applicant intends to have the County Surveyor of Nakuru to ascertain the respondent's claim; that if survey is undertaken the neighbouring parcels Numbers 1015 and 1018 will be affected; that the proposed amendments will include other parties and see the effective adjudication of the dispute. The application is supported by the affidavit of the defendant, who has more or less reiterated the foregoing.

When the application first came before me on 22 January 2015, I directed all parties to be served, including the proposed new parties and directed that the application be heard *inter partes* on 2 February 2015. Despite all parties being served, none filed any response to the application and on the date of the hearing, only Ms. Wanjiru Njuguna for the defendant/applicant appeared. She urged that I allow the application.

I have considered the application.

The suit herein was commenced on 16 June 2014 by way of plaint. The case of the plaintiff is that he is the owner of the land parcel Nakuru/Tinet/Sotik Settlement Scheme/1017 and he has alleged that the defendant/applicant has encroached into it. The defendant filed a Statement of Defence in which he denied the allegations of the plaintiff and asserted that he is the owner, and in occupation, of the land parcel No. 1016. It will be discerned first, that the defendant wishes to amend his defence to include a counterclaim and introduce two new parties as co-defendants. I have looked at the draft amended defence which gives the names of these two persons, Arap Sigirai and Rusi Langat as the intended 2nd and 3rd defendants. They are said to be the owners of the adjoining land parcels. I do not think it is appropriate that I order the two named persons to be defendants in this suit, as the plaintiff has not made any allegations against them. I cannot impose the said persons on the plaintiff if it is not his wish to sue them. The defendant had the choice of making them defendants in the counterclaim. I have looked at the draft amended defence and counterclaim, but I have not seen any allegations against them. Neither can I therefore order Arap Sigirai and Rusi Langat to be defendants in the applicant's counterclaim. They could however be interested in the outcome or process that may lead to the conclusion of this case, and my direction therefore is that they be enjoined as interested parties. Apart from this, I have no other problem with the draft amended defence and counterclaim, and do grant leave to the defendant to proceed to amend his defence as proposed. I further direct that the amended defence and counterclaim be filed and served on all parties, including the interested parties within 7 days from today.

The other prayer in the application is for an order to restrain the plaintiff from interfering with the defendant's use and occupation of the land parcel Nakuru/Tinet/ Sotik Settlement Scheme/1016. I am afraid I cannot issue the order, because it has not been shown that the plaintiff is in occupation of the defendant's land. In fact the plaintiff alleges that it is the defendant who is on his land parcel No. 1017. This appears to me to be a boundary dispute.

To resolve the matter, I direct the County Surveyor, Nakuru County, to proceed to the land parcels Nakuru/Tinet/Sotik Settlement Scheme/1016 and 1017, and establish or re-establish the boundaries thereof. The County Surveyor to also make a report of the occupation on the ground and further state whether there is any encroachment by either party in the land of the other, and if so, the extent of that encroachment. The report to be filed within 30 days from today. I direct the defendant to extract this order and serve it upon all parties and the County Surveyor so that the County Surveyor may proceed as directed above. Any charges will be shouldered by the defendant for now.

The costs of this application shall be in the cause.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 3rd Day of February 2015.

MUNYAO SILA

JUDGE

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In presence of :-

Ms. Wanjiru Njuguna for defendant/applicant

No appearance for M/S Tengekyon and Koske for plaintiff /respondent (but plaintiff present).

Emmanuel Maelo : Court Assistant

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU