

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 517 OF 2014

LUCY NUNGARI NGIGI & OTHERS PLAINTIFFS

VERSUS

NATIONAL BANK OF KENYA LIMITED & ANOTHERDEFENDANTS

AND

CHARLES WAMBUGU & OTHER 127..... PROPOSED PLAINTIFFS

RULING

Joinder of parties

[1] A large number of 128 people have applied for the leave of the court to be joined as plaintiffs in this suit. Their application is a Motion dated 19th January 2015 which is expressed to be made under Order 9 Rule 8(3), Order 8 Rule 3 and Order 51 Rule of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act, Articles 48 and 159 of the Constitution of Kenya, 2010. The application also seeks for leave to amend the Plaint as is necessary after the joinder. The application is supported by the Affidavit of Charles Wambugu and the grounds set out in the application. The Plaintiffs as well as the 2nd Defendant supported the application. The 1st Defendant intimated to court that it opposed the application although it did not file any papers; replying affidavit or grounds of opposition. Nonetheless I will determine it on merit.

[2] Joinder of parties is governed by Order 1 of the Civil Procedure Rules. In law, joinder should be permitted of all parties 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 of fact would arise. See also Order 7 Rule 9 of the Civil Procedure Rule. The court may even in its own motion add a party to the suit if such party is necessary for the determination of the real matter in dispute or whose presence is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit. Therefore, joinder of parties is permitted by law and it can be done at any stage of the proceedings. But, joinder of parties may be refused where such joinder: will lead into practical problems of handling the existing cause of action together with the one of the party being joined; is unnecessary; or will just occasion unnecessary delay or costs on the parties in the suit. In other words, joinder of parties will be declined where the cause of action being proposed or the relief sought is incompatible to or totally different from existing cause of action or the relief. The determining factor in joinder of parties is that a common question of fact or law would arise between the existing and the intended parties. This is the test I shall apply in this case.

Same suit property, common issues

[3] The suit property is L.R.No.248/4 Ebeneze Ridges, Magutha Area in Kiambu. The 2nd Defendant is the registered owner of the suit property while the 1st Defendant is the Mortgagee thereto. The suit

property was subdivided into several plots which were then sold to the Plaintiffs and the intended Plaintiffs. The 2nd Defendant alleges the 1st Defendant gave consent to the subdivision and sale of these plots and the purchase price of these plots were to go towards servicing the loan advanced by the 1st Defendant to the 2nd Defendant. The addendum to the loan facility Agreement dated 14.11.2011 is annexed and it is said to be the instrument which was to enable the 1st Defendant to grant a partial discharge of the individual plots subdivide from the mortgaged property. I do not wish to determine the validity or otherwise of this arrangement between the 1st and 2nd Defendant because that is a matter for the trial; but one thing is clear from all these things: that the Plaintiffs and the intended Plaintiffs have an inextricable relief arising out of the subdivision and sale of the plots herein to them by the 2nd Defendant. Even if each of the Plaintiffs was to file a separate suit, a common issue of fact and law would emerge in relation to the subdivision and sale of the plots to each one of them. Similarly, the validity of the addendum to the mortgage herein between the Defendants is in the center of the cases by the Plaintiffs and the intended Plaintiffs. Therefore, despite the fact that the plots are numerous and perhaps of different sizes or that they were sold to different persons, they are all deduced from the suit property, and derived in the same transaction: they are based on the addendum between the Defendants, and all form part of the mortgaged property. Invariably, the determination of the real issues in controversy between the Plaintiff and the intended plaintiffs on the one hand, and the Defendants on the other hand, will need all concerned parties to be before the court. This course not only prevents duplication of efforts but also allows the court to determine the relief in the entire transaction and all common issues of fact and law which arise among the parties. Accordingly, to enable the court determine the real issues in dispute among all the parties, the intended Plaintiffs must be enjoined in the suit. I order that all the 128 intended Plaintiffs shall be joined as Plaintiffs in the suit. The Plaintiff shall then be amended as may be necessary to capture the respective plots purchased by each of the 128 Plaintiffs. The amended Plaintiff shall be served on the Defendants as by law required. For good order, the amended Plaintiff shall be filed in court within 7 days of today. It is so ordered. Costs shall be in the cause.

Dated, Signed and delivered in court at Nairobi this 6th Day of February, 2015.

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F. GIKONYO

JUDGE