

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 42 OF 2013

DAVID WAWERU MBUGUA PLAINTIFF

VERSUS

WILLIAM ADERO GOGA 4 OTHERS DEFENDANTS

RULING

1. The applicant brought a notice of motion dated 21/6/2013 in which he seeks leave of the court to amend the plaint and bring in a sixth defendant. The applicant contends that the amendment has been necessitated by the 1st to 5th respondents' claim that they were wrongly sued as they were only officials of A.I.C Amuka Church.
2. The application is opposed by the respondents through grounds of opposition filed in court on 10/7/2013. The respondents contend that the application is fatally defective as there is a ruling of this court holding that the defendants were wrongly sued. The respondents also contend that the proposed sixth defendant is non-existent.
3. I have considered the applicant's application as well as the opposition to the same by the respondents. When the plaintiff filed this suit against the respondents, the respondents in their pleadings indicated that the proper party which should have been sued was the A.I.C. Kenya Trustees Registered. It is the board of this body which is capable of suing and being sued. The respondents cannot again turn round and say that they are opposing the application to include a sixth defendant.
4. The applicant has deposed that he is not sure whether he should claim relief from the 1st to 5th respondents because he is unable to ascertain if the five respondents are officials of Amuka A.I.C Church or not. Order 1 Rule 7 of the Civil Procedure Rules provides as follows;-

“Where the plaintiff is in doubt as to the persons from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable and to what extent may be determined as between all parties”.

5. It therefore follows that there is no harm in the applicant seeking to join a sixth defendant. The proposed defendant may be the lawful body to be sued but the defendants may well be involved in some activities which are directly affecting the applicant. Their presence is therefore necessary. The issue as to who will ultimately be liable will be decided at the conclusion of the case herein. I therefore find that the applicant's application has merits. The same is hereby allowed. The amended plaint shall be filed within 14 days from the date hereof. Costs in the cause.

It is so ordered.

Dated, signed and delivered at Kitale on this 4th day of June, 2014.

E. OBAGA

JUDGE

Ruling delivered in court at 9.26 a.m. in the absence of parties who had notice of the same.
Court Clerk – Kassachoon.

E. OBAGA

JUDGE

4/6/2014