



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Environmental & Land Case 259 of 2012

OLYMPIC TRADING.....PLAINTIFF/RESPONDENT

VERSUS

SAID MOHAMED.....DEFENDANT/APPLICANT

KENYA KONA GROUP LTD.....INTERESTED PARTY/APPLICANT

RULING

1. Kenya Kona group limited the applicant/interested party filed a chamber summons application dated 5/6/12 seeking to be enjoined in this suit as an interested party. In the application the interested party seeks prayers 1, 2, 3 and 4. The application is said to be based on the annexed affidavit of Cedric Wafula Kuloba.
2. The applicant also filed a supplementary affidavit dated 29/6/12. The application was opposed the plaintiff/respondent filed a replying affidavit sworn by Eddy Peter N. Kimemia director of the plaintiff company. Counsels for the parties made oral submission on the 5/7/12. The plaintiff also filed written submission where it cited the cases stated in his list of authorities filed in Court on the 18/6/12. In addition to the replying affidavit the plaintiff/respondent also filed grounds of opposition, 7 grounds are stated herein. The applicant seeks to be joined in the matter before the *inter-partes* hearing of the plaintiff's and defendant's application dated the 15/5/12 and 22/5/12 respectively. The applicant's main reason for wanting to be in this matter is that it had duly sub-leased a part of the premises on the suit land from one Agnes Kibue as the head tenant the latter having leased the same from the estate of the Defendant the suit land being L.R No. 2/206 (Original No. 2/88/1) Kilimani, Nairobi. The subject matter between the Plaintiff and Defendant was leased by the Defendant's estate to Agnes Kabue.
3. That whilst carrying out its business at the said suit premises the plaintiff invaded the premises and destroyed, demolished the premises rented by the applicant. The applicant argues that due to the loss it occasioned, it has a vested interest in the matter as it seeks to claim damages and the out-come of the suit will affect its interest.
4. I have read the affidavits filed by the parties the authorities cited by the plaintiff and also the provisions of order 1 rule 10(2) and 25 which the applicant invokes to be granted the orders. Order 1 Rule

10 (2) states that the Court may at any stage of the proceedings either upon a written application of either party and on such terms as may appear to the Court to be just, order the name of any person improperly joined, whether as a plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined whether as plaintiff and defendant or whose presence before the Court may be necessary to enable the Court effectively and completely to adjudicate upon and settle all questions involved in the suit be added.

5. From the plaint filed by the plaintiff it claims that it owns the property and seeks to have the defendant restrained from remaining in the property transferring it, occupying leasing etc. It also seeks to have a mandatory injunction that the defendant do vacate the suit premise and that the plaintiff be declared the lawful legal and absolute owner of the Property.

6. The applicant is not the tenant of either the plaintiff or the defendant in the matter. The applicant is a subtenant of a tenant of the defendant. What claim is that the applicant could possibly have against the plaintiff? I do agree with the plaintiff's Counsel that the remedy can only be one of damages. For the applicant to be enjoined the applicant has to show that its presence in the matter is necessary to enable the Court effectively and completely does adjudicate upon and settle all questions. How is the applicant's presence going to help put this matter in light of the orders being sought? I find that the applicant presence will add no value in the matter. Its claim is of loss of business he can sue for it, joining him in the matter is of no value. I find that the applicant is not a party who has substantial and legal stake in these proceedings and is therefore not a necessary or proper party to the suit.

7. In the supplementary affidavit the applicant has stated that its deposit on rent in the sum of Kshs. 33,050/- had to be refunded by the lawyer. He can sue for any claim for damages. A party will only be joined to a suit where there is a common question of law or fact invoked. **(Peter Company Ltd Vs. Mangali & others 1969 E.A.)** I find no merit in this application as the applicant has failed to show that its presence is necessary in the suit to enable the Court effectively and completely adjudicate and settle all questions involved in the suit. I decline to deal with the issues raised by the plaintiff Counsel on the supporting affidavit as it is a technical issue and in light of the provisions of article 159 (2) (d) of the constitution, I chose not to strike out the said supporting affidavit though what was omitted was necessary in identifying the person who swore the affidavit.

8. The application has no merit and I dismiss it with costs to the plaintiff/respondent. I note that the defendant did not oppose the application. The plaintiff and the defendant shall proceed to prosecute their applications dated 15/5/12 and 22/5/12 respectively.

Orders accordingly.

Dated, signed and delivered this **11th** day of **July**, 2012

R. OUGO
JUDGE

In the Presence of:-

.....For the Applicant

.....For the Respondent

Kabiru

Court Clerk