



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT BUNGOMA**

**ELC CASE NO. 19 OF 2019**

**GEORGE KHAEMBA MUMALI.....PLAINTIFFS**

**VERSUS**

**GEORGE SEMO NDATI.....1<sup>ST</sup> DEFENDANT**

**MAURICE KUNDU.....2<sup>ND</sup> DEFENDANT**

**MIKE ONYANGO.....3<sup>RD</sup> DEFENDANT**

**ENOCK BARASA.....4<sup>TH</sup> DEFENDANT**

**MARITINA KUNDU.....5<sup>TH</sup> DEFENDANT**

**ROBERT LUMBASI.....6<sup>TH</sup> DEFENDANT**

**KADIAN WANYAMA.....7<sup>TH</sup> DEFENDANT**

**R U L I N G**

What calls for my determination is the plaintiff's Notice of Motion dated 17<sup>th</sup> July 2020 grounded on **Order 1 Rule 3** and **Order 2 Rule 13 of the Civil Procedure Rules**. The plaintiff seeks the following orders: -

**1: Spent**

**2: That this Honourable Court be pleased to grant leave to the plaintiff to amend the plaint and enjoin the 7<sup>th</sup> defendant in this suit.**

**3: That this Honourable Court be pleased to consider the amended plaint as properly filed.**

**4: That costs of this application be in the cause.**

The application is anchored on the grounds set out therein and is also supported by the affidavit of **GEORGE KHAEMBA MUMALI** the plaintiff herein.

The gravamen of the application is that following the filing of this suit on 17<sup>th</sup> July 2020 in which the plaintiff seeks orders that the 1<sup>st</sup> to 6<sup>th</sup> defendants be enjoined from land parcels **NO EAST BUKUSU/SOUTH KANDUYI/21675** and **21677** (the suit land), a declaration that the said land belongs to the plaintiff and an order to evict the 1<sup>st</sup> to 6<sup>th</sup> defendants therefrom, one **KADIAN WANYAMA** (the proposed 7<sup>th</sup> defendant) has also trespassed onto the suit land on which he is carrying out development. It is therefore necessary to amend the plaint to enjoin him as a defendant.

When the application was placed before me on 20<sup>th</sup> July 2020, I directed that it be canvassed by way of written submissions and gave the plaintiff 14 days to serve the defendants who would have 14 days from the date of service to respond. I also directed that the ruling would be delivered on 1<sup>st</sup> October 2020 by way of electronic mail.

The record shows that **ANWAR & CO ADVOCATES** were duly served on behalf of the 7<sup>th</sup> defendant. As at the time the application was placed before me for purposes of drafting this ruling, no response had been filed by the defendants. This application is therefore not opposed.

**Order 1 Rule 10 (2) of the Civil Procedure Rules** provides as follows: -

*“The Court at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”*

The Court enjoys a wide latitude in granting parties leave to amend their pleadings. In **CENTRAL KENYA LTD .V. TRUST BANK LTD & OTHERS C.A CIVIL APPEAL NO 222 OF 1998 [2002 eKLR]**, the Court of Appeal stated as follows: -

*“Hence the guiding principle in application for leave to amend is that all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder, as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs (see **BECOCO LTD .V. ALFA LAVAL CO LTD 1994 4 ALL E R 464**).”*

If, as is averred by the plaintiff and which has not been rebutted, the proposed 7<sup>th</sup> defendant has trespassed onto the suit land, then it is important that he be enjoined in this suit because his presence is necessary to have the issues relating thereto effectually and completely adjudicated upon. Further, if the proposed 7<sup>th</sup> defendant is constructing on the suit land, then it is in his interest to be enjoined in this suit so that he can protect that interest and also to avoid orders that will affect him being made in his absence.

Ultimately therefore, I allow the plaintiff’s Notice of Motion dated 17<sup>th</sup> July 2020 in the following terms: -

- 1. Leave to amend the plaint to enjoin the 7<sup>th</sup> defendant is granted.**
- 2. The 7<sup>th</sup> defendant be served with summons and the amended plaint within 15 days from the date of this ruling.**
- 3. The 7<sup>th</sup> defendant shall have 15 days from the date of service of the amended plaint to file his defence.**
- 4. No orders as to costs.**

**Boaz N. Olao.**

**J U D G E**

**1<sup>st</sup> October 2020.**

Ruling dated, delivered and signed at **BUNGOMA** this 1<sup>st</sup> day of October 2020. The ruling is delivered by way of electronic mail in keeping with the **COVID – 19** guidelines as was advised to the parties.

**Boaz N. Olao.**

**J U D G E**

**1<sup>st</sup> October 2020.**