



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 153 OF 2015

ENDO HOLDINGS LIMITED.....PLAINTIFF

VERSUS

SAMMY KIPROTICH TANGUS.....1ST DEFENDANT

NELLY CHEBET TANGUS.....2ND DEFENDANT

LANDS REGISTRAR, UASIN GISHU.....3RD DEFENDANT

COUNTY GOVERNMENT OF UASIN GISHU.....4TH DEFENDANT

HON. ATTORNEY GENERAL.....5TH DEFENDANT

RULING

[CHAMBER SUMMONS DATED ON 11TH OCTOBER, 2018]

1. The 4th Defendant moved the Court through the Chamber Summons dated 11th October, 2018, seeking for its name to be struck out from the suit and costs. The application is based on the five (5) grounds marked (i) to (v) on its face and is supported by the affidavit of **Nelly Jerotich**, the Ag. Chief Officer, sworn on the 11th October, 2018. That it is the 4th Defendant's case that it is a stranger to the Plaintiff's cause of action and the particulars of fraud pleaded touches on 1st to 3rd Defendant only. That no claim has been made against the 4th Defendant who has however been enjoined in the suit. That the Plaintiff's suit against the 4th Defendant is incompetent, an abuse of the Court process and its name should be struck out from the suit.

2. The application is opposed by the 3rd and 5th Defendants through their four (4) grounds of opposition dated the 28th July, 2020 summarized as follows;

(a) That the application is incurably defective, misconceived, untenable, an abuse of the court process, devoid of substance and full of misrepresentations of facts.

(b) That the 4th Defendant's role in the cause of action of the suit is of paramount importance and striking it out will amount to a miscarriage of justice.

(c) That the application fails the test in **D. T. Dobie Kenya Co. Ltd Vs Joseph Mbaria Muchina & Leah Wanjiku Mbugua (1982) KLR 1.**

3. The Plaintiff also opposed the application through their six (6) grounds of opposition dated 1st October, 2020 summarized as follows;

(a) That the application is untenable in law, incompetent, irregular, fatally defective, abuse of the court process and contravenes **Order 1 of Civil Procedure Rules.**

(b) That the 4th Defendant has not made a reasonable case to be excluded from the suit and the application should be dismissed with costs.

4. The learned counsel for the Plaintiff and 4th Defendant filed their written submissions dated 1st October, 2020 and 10th August, 2020 respectively. That though Counsel for the 3rd and 5th Defendants informed the Court on 11th November, 2020 that they had filed their submission on the 16th October 2020, and promised to follow up with the registry to ensure a copy was placed on the record, none was traced

by the Court.

5. The following are the issues for the Court's determinations;

(a) Whether the 4th Defendant is a necessary party in this suit for the issues raised to be determined with finality.

(b) Who pays the costs of the application?

6. The Court has carefully considered the grounds on the Chamber Summons, affidavit evidence, the grounds of opposition, submissions filed, superior courts' decisions cited therein, the pleadings filed and come to the following findings;

(a) That the 4th Defendant was enjoined in this suit through the Amended Plaint dated 20th August, 2028. That paragraph 5, 6, 7, 8 and 10 of the Amended Plaint clearly shows the nexus of the 4th Defendant in the eyes of the Plaintiff to the suit land, and hence the cause of action.

(b) That further, among the documents listed and attached to the Plaintiff's lists of documents dated 2nd June, 2015 includes letters from County Council of Wareng dated 9th June 1995, 16th November 1995, Miscellaneous Receipt No. 5607 issued by the same Council and copy of a cheque paid to the said Council of Kshs.150,000 dated 18th August, 1995.

(c) That the finding in **(a)** and **(b)** above, goes to show that indeed, the 4th Defendant, who for all purposes and intents is the one that inherited the County Council of Wareng after the introduction of devolution, courtesy of the Constitution 2010, is a necessary party in this suit and proceedings.

(d) That as the 4th Defendant's Chamber Summons is without merit, it will pay the costs to the Plaintiff, and the Defendants.

7. That flowing from the findings above, the 4th Defendant's Chamber Summons dated 11th October, 2018 is dismissed with costs. It is so ordered.

Delivered virtually and dated at Eldoret this 16th day of December, 2020.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiff: Absent.

Defendants: Absent.

Counsel: M/s Rotich for Maritim for Plaintiff.

M/s Moraa for 1st and 2nd Defendants.

Mr. Kuria for 3rd and 5th Defendants.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.