



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 141 OF 2014

KINGI NZYOKI NGUYO.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING COMPANY LTD.....1ST DEFENDANT

RURAL ELECTRIFICATION AUTHORITY.....2ND DEFENDANT

RULING

1. This Ruling is in respect to the 2nd Defendant's Notice of Preliminary Objection dated 28th April, 2015. In the said Notice of Preliminary Objection, the 2nd Defendant has averred that the Plaintiff did not seek the leave of court to enjoin the 2nd Defendant in this suit. The Notice of Preliminary Objection proceeded by way of written submissions.

2. The 2nd Defendant's advocate submitted that the Plaintiff amended his Plaintiff on 2nd March, 2015 to enjoin the 2nd Defendant in the suit; that the law requires that a Plaintiff who intends to join a party to a suit obtains the leave of the court and that the Plaintiff enjoined the 2nd Defendant in the suit without the permission of the court. Counsel submitted that the Notice of Preliminary Objection should be allowed. The Plaintiff's submissions are not on record.

3. The record shows that this suit was filed on 28th January, 2014 against the 1st Defendant. The Summons to Enter Appearance in respect of the 1st Defendant were issued on 30th October, 2014.

4. On 2nd March, 2015, the Plaintiff filed an Amended Notice of Motion dated 24th February, 2015 together with the Amended Plaintiff. In the Amended Plaintiff of 24th February, 2015 and the Motion, the Plaintiff enjoined the 2nd Defendant as a new party without the leave of the court.

5. The provisions of Order 1 Rule 10 of the Civil Procedure Rules provides the manner in which a party may be added or removed in proceedings. Order 1 Rule 10 (2) provides as follows:

“10(2) The court may 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, be struck out, and that the name of any person who ought to have been 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.”

6. Order 1 Rule 10(4) on the other hand provides as follows:

“10(4) Where a defendant is added or substituted, the plaintiff shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaintiff shall be served on the new defendant and, if the court thinks fit, on the original defendants.”

7. Other than the other general amendments which may be included in a Plaintiff without the leave of the court (*where pleadings have not closed*), the law prohibits the introduction of a Defendant in a suit without the leave of the court.

8. Indeed, after such leave is granted, the amended copies of the Summons are supposed to be issued and served upon the Defendant. I have perused the record and I have not come across any order of the court allowing the Plaintiff to enjoin the 2nd Defendant in the suit.

9. Having not sought the leave of the court to enjoin the 2nd Defendant in the suit, the suit as against the 2nd Defendant and the Amended

Summons dated 2nd March, 2015 are bad in law.

10. For those reasons, I allow the 2nd Defendant's Notice of Preliminary Objection dated 28th April, 2015.

11. The Plaintiff's suit as against the 2nd Defendant and the Amended Notice of Motion dated 24th February, 2015 are struck out with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 15TH DAY OF FEBRUARY, 2019.

O.A. ANGOTE

JUDGE