



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT GARISSA

ELC CASE NO. 12 OF 2018

ISSA KUNO.....1ST PLAINTIFF

AFRO PRIDE.....2ND PLAINTIFF

VERSUS

FAMODUS YOUTH SELF HELP GROUP.....1ST DEFENDANT

SAHLAN MOHAMMED KEINAN.....2ND DEFENDANT

ANGLO AFRICAN CONGLOMERATE.....3RD DEFENDANT

GEORGE NJOROGE.....4TH RESPONDENT

RULING

1. Coming up for determination is the 2nd Defendant/Applicant Chamber Summons Application dated 3rd May, 2018 seeking orders that:-
 - a) **That the name of the 2nd Defendant be struck out of the suit on the ground that it is improperly enjoined as a party to this suit.**
 - b) **The Application/suit does not contain sufficient cause of action against the 2nd Respondent/Defendant.**
 - c) **That cost of this Application be provided for.**
2. The application is brought under Order 1 Rule 10 (2) Civil Procedure Rules and Order 2 Rule 15 of the Civil Procedure Rules where the applicant is seeking orders that he be struck out of these proceedings as the 2nd Defendant.
3. The applicant argument is that the 1st Defendant is a self Help Group registered as such at the Department of Social Development, Garissa County with the aim of uplifting members' life, and that it owns the Land Parcel GSA/B/1217 located in Ali Jibril Burukey within Garissa County.
4. The applicant argues that she has been sued by the Plaintiff because of an agreement entered into between the 1st Respondent and the 3rd and 4th Defendant who have since been struck out from the suit. The Applicant in sum argues that she is an ordinary member of the group and that she ought not to be joined in this suit, as under the Law the official of the group are the parties who should be joined. In this she relies in the case of **Ithenguri Mwireri Women Group v Virginia Wanjiku Kamundia, Civil Appeal No. 105 of 2012.**
5. Further, the applicant argues that the suit does not disclose any reasonable cause of action against her thus a waste of Honourable Court time, in this she relies on Order 2 Rule 15 of the Civil Procedure Rules to have the court strike her name from the suit.
6. It is the applicant argument that the only reason she is joined is because she signed a commitment agreement between the 1st Respondent and the 3rd and 4th Defendant, and that she signed it on an acting capacity.
7. Moreover, she argues that the mining agreement between the 1st Respondent and the Plaintiff has since expired under the Mining Act of

2016 and therefore it is of no legal effect. In sum she states that she is sick and unable to defend the suit and that the officials of the 1st Respondent are willing to prosecute the suit.

8. In response to the application, the Respondents/Plaintiffs oppose the application, arguing that the 2nd Defendant is a necessary party to the suit pursuant to Order 1 Rule 10 of the Civil Procedure Rules, 2010 so as to enable the Court properly adjudicate the matter.

9. In their submissions filed on 27th March, 2019, they argue that the issue before the court is in respect to a trespass by the Defendants on the Plaintiffs land, whereby they have been carrying out mining and quarrying activities.

10 The subject of the dispute is the lease agreement between the 1st Respondent and the 3rd and 4th Defendant, which gave rise to trespass on the Plaintiff's land. They argue that the 2nd Defendant is a necessary party for the reason that she is the one who signed the lease agreement on behalf of the 1st Respondent. They rely in the case of **Rice vs Randolph, 96 N.C APP 112,113(1989)**.

ISSUES:

11. After going through affidavits, pleadings and the parties written submissions, the main issue in this application is to whether the applicant is properly joined in this suit as a necessary party.

12. Order 1 Rule 10 (2) Civil Procedure Rules is to the effect that:-

“the court may at any stage of any proceedings order any name of party improperly joined as Defendant be struck out.”

13. It is apparent from the parties' pleadings herein that the Plaintiffs claim is founded on trespass to the parcel of land arising from a lease agreement between the 1st Respondent and the 3rd and 4th Defendants. The 2nd Defendant/Applicant is joined to the suit for the sole reason that she executed the lease agreement between the 3rd and 4th Defendants on behalf of the 1st Respondent, which occasioned the trespass.

14. The core of the plaintiffs claim is the alleged trespass occasioned by the lease agreement between the 3rd and 4th Defendants and the 1st Defendant. The outstanding claim is against the 1st Defendant which is a Self Help Group in which the 2nd Defendant is a member and alleges to have signed the lease agreement on an acting capacity and on behalf of the 1st Respondent officials.

15. Order 1 rule 10 (2) of the Civil Procedure Rules, 2010 gives the court the discretion, on terms that appear just, to order the name of a party improperly joined to be struck out and the name of any person who ought to have been joined or whose presence is necessary to enable the court effectually and completely adjudicate upon and settle all questions involving the suit to be added. This may be done at any stage of the proceedings.

16. The question therefore is whether it is in the interest of justice for the applicant to be removed as a defendant in these proceedings and whether her removal will hinder the Court from effectually and completely adjudicating and settling all questions involved in this suit. On this Order 1 Rule 10 (2) gives the court discretion to order joinder or removal of a party.

17. The 2nd Defendant does not deny being a member of the 1st Respondent and admits having executed the lease agreement on behalf of the 1st Defendant. At the time he allegedly signed he was not an official of the 1st Defendant but was in an acting position. In my view, the 2nd Defendant is a necessary party whose presence will assist this court in effectually and completely adjudicate upon and settle all issues arising in this dispute.

18. It is therefore my considered opinion that 2nd Defendant's application lacks merit and the same is hereby dismissed with costs.

It is so ordered.

READ AND SIGNED IN THE OPEN COURT THIS 10TH DAY OF MAY, 2019.

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E. C. CHERONO

ELC JUDGE

In the presence of:

1. Iqra HB Faruk for the Applicant
2. Respondent/Advocate – absent
3. Court Clerk Amina