



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 63 OF 2012**

**CAROL CONSTRUCTION ENGINEERS LTD.....PLAINTIFF**

**VERSUS**

**NAOMI CHEPKORIR LANGAT.....DEFENDANT**

**RULING**

1. This suit was commenced by way of an Originating Summons which was filed on 13 November 2012. The orders sought in the Originating Summons are for a declaration that the applicant (whom for ease of reference I will refer to as the plaintiff) is the absolute owner of the land parcel Njoro/Ngata Block 2/130; an order of permanent injunction to restrain the respondent (whom for ease of reference I will refer to as the defendant) from the said parcel of land; and damages of Kshs. 4,250,000/= claimed to have arisen out of malicious destruction of property by the defendant. The suit land in this matter was owned by Joel Kimitet Langat who appears to have charged it to Kenya Commercial Bank. The Bank in exercise of its statutory power of sale, sold the property to one Martha Moraa Mayieka. The said Ms. Moraa then transferred the property to the plaintiff in this case. The defendant is wife to the said Joel Kimitet Langat.

2. Through an application dated 15 September 2017, the defendant sought orders to enjoin Joel Kimitet Langat, Kenya Commercial Bank, and Martha Moraa Mayieka as co-defendants to this suit. When the application came before me, I directed that all the proposed new parties be served with the application so that they can be heard on it. Service was effected upon Joel Kimitet Langat and Kenya Commercial Bank, but the defendant mentioned that Ms. Moraa is out of jurisdiction in the United Kingdom and applied to serve by substituted means abroad. I gave the said orders and directed that Ms. Moraa may be served at her last known physical address in the UK through courier and directed that the application be heard inter partes on 13 June 2019. When the application came up, Mr. Aim, learned counsel for the defendant informed the court that he was unable to effect service of the hearing notice upon Ms. Moraa as she could not be traced at her last physical address by the courier service. He applied to serve through newspaper advertisement.

3. Mr. Kagucia, learned counsel for the plaintiff, was of opinion that the application is meant to frustrate the hearing of the matter. He submitted that his client ought to be given a hearing date and if the defendant has issues with the bank or Mr. Langat or Ms. Moraa, she can pursue them separately.

4. I have considered all views. In all respects, the application dated 15 September 2017 is one that ought to have been disposed of by now. It has not been heard because the defendant cannot trace one of the persons sought to be included in this suit. My own position on the application is that before any party is added, he/she needs to be heard. I cannot fault the defendant for not being able to serve Ms. Moraa, for her whereabouts at the moment are unknown. As matters stand, it is not clear whether Ms. Moraa is within this country, or in the UK, or in another country. However, the suit land is located in Kenya, and given the fact that it is not clear if Ms. Moraa is within the country or not, I direct that the hearing notice upon her be served by way of an advertisement either in the Daily Nation or Standard newspaper. I will give a hearing date for the said application and service be effected as I have directed above.

5. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of June 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr. Kagucia for the plaintiff.

Mr. Geke holding brief for Mr. Aim for the defendant.

Mr. Ojou for Kenya Commercial Bank.

Court Assistants: Nelima Janepher/Patrick Kemboi.

**JUSTICE MUNYAO SILA**

