



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 228 OF 2014

CHARLES ONDIEKI ONCHWATI & 3 OTHERS.....PLAINTIFF

VERSUS

NAKURU COUNTY GOVERNMENT.....1ST DEFENDANT

BOARD OF GOVERNORS NATEWA SECONDARY SCHOOL.....2ND DEFENDANT

AND

MARGARET WANGARI MAINA.....APPLICANT/INTENDED 5TH PLAINTIFF

RULING

(Application seeking joinder as co-plaintiff; applicant interested in part of the subject matter of the suit; application allowed)

1. The application before me is that dated 5 October 2018 brought pursuant to the provisions of Order 1 rule 1 and 14 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act, Cap 21, Laws of Kenya. As drawn, the application seeks orders to have the applicant, one Margaret Wangari Maina, enjoined as the 5th plaintiff to this suit.

2. The background to this suit is that it was commenced through a plaint which was filed on 5 August 2014. There are four plaintiffs who aver to be the respective owners of the land parcels Nakuru Municipality Block 25/1109 Plots Nos. A, B, C, and D, and now LR Nos. 12570/238, 239, 240, and 241. They aver that they filed suit because the defendant threatened to evict them. They have sought declaratory orders that they are beneficiaries of the suit properties and also entitled to ownership by virtue of adverse possession. The position of the defendants is that the land parcel Nakuru Municipality Block 25/1109 is a playground for the Natewa Secondary School.

3. In this application, the applicant avers that she is the beneficiary and legal administrator of the estate of the late James Maina who died on 28 October 2009. It is said that the deceased was owner of Plot No. C, in Nakuru Municipality Block 25/1109, now LR No. 13570/240. She thus wishes to be enjoined in this matter to agitate that position.

4. The application is not opposed.

5. On my part, I see no reason why I should not allow it. I have seen that the applicant claims that the estate that she represents is entitled to a portion of the disputed land. Her cause of action is thus similar to the cause of action presented by the existing plaintiffs. Whether or not the estate that she represents is entitled to the land that they claim will be the subject of determination in the suit and all parties will be afforded the opportunity to present their cases. No prejudice will therefore be caused to any party if this application is allowed and if the applicant is allowed to enjoin this suit as co-plaintiff.

6. For the above reasons, the application is allowed. I direct that the plaint be amended to reflect that there is now an additional plaintiff in the suit and her prayers may be accommodated in the amended plaint. I direct that the amended plaint be filed and served in 14 days. Upon service of the amended plaint, the defendants are at liberty to amend their defences within 14 days.

7. I make no orders as to costs.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 31st day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mrs. Gathecha holding brief for Mr. Ogeto for the plaintiffs and applicant.

Ms. Ogange holding brief for Mr. Konosi for the 1st defendant and holding brief for Mr. Waiganjo for the 2nd defendant.

Court Assistants- Nelima Janepher /Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU