



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**

**ELC CASE NO. 05 OF 2014**

**JOSEPH SIMIYU MULONGO.....PLAINTIFF**

**VERSUS**

**JOSEPHAT WELEMBWA.....1<sup>ST</sup> DEFENDANT**

**ERIC WEKESA MULONGO.....2<sup>ND</sup> DEFENDANT**

**HERBERT NYONGESA MULONGO.....3<sup>RD</sup> DEFENDANT**

**THE CHIEF LUUYIA LOCATION.....4<sup>TH</sup> DEFENDANT**

**RULING**

This case was due for Judgment today. However, upon perusal of the Plaint herein and having considered the plaintiff's evidence, I shall deliver a ruling rather than a Judgment for the following reasons.

The plaintiff is acting in person without the benefit of an advocate. It is in that context that his pleadings should be considered.

He holds the original title to land parcel **NO E. BUKUSU/S. NALONDO/1021** (the suit land) which is however registered in the names of one **TIMOTHY NYONGESA WANDABWA** who had used it as security for a loan of Kshs. 91,610/= from the Agricultural Finance Corporation but defaulted in repayment.

The plaintiff and **TIMOTHY NYONGESA WANDABWA**, with the knowledge and consent of the Agricultural Finance Corporation, entered into a verbal agreement whereby the plaintiff repaid the loan and subsequently became the "**owner**" of the suit land. It is on that basis that the plaintiff filed this suit on 8<sup>th</sup> January 2014 seeking orders that the defendants who have encroached thereon, be restrained by a permanent injunction from interfering with the suit land and to remove the restriction placed thereon.

As indicated above, the plaintiff is acting in person hence the challenge that he is facing in his pleadings. The fact however is that so long as the suit land is still registered in the names of one **TIMOTHY NYONGESA WANDABWA**, the plaintiff would have no locus to seek any orders for injunction or removal of restriction placed thereon unless perhaps he is approaching the Court as an adverse possessor or beneficiary of a trust. And even then, he must enjoin the said **TIMOTHY NYONGESA WANDABWA** in this suit. When I asked him why he did not enjoin **TIMOTHY NYONGESA WANDABWA** in these proceedings, he said that **TIMOTHY NYONGESA WANDABWA** had since disappeared and cannot be traced. This was also confirmed by the manager of Bungoma Branch of the Agricultural Finance Corporation **MR JAMES SHAMALA**.

**Order 1 Rule 10(2) of the Civil Procedure Rules** provides as follows:-

*"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 in the suit, be added."*

**Order 8 Rule 5(1) of the Civil Procedure Rules** on the other hand grants the Court the power to order for amendment of pleadings on its own motions. It states:-

*"For the purpose of determine the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the Court may either of it's own motion or on the application of any party order any document to be amended in*

*such manner as it directs and on such terms as to costs or otherwise as are just.”*

Pursuant to those provisions, I hereby make the following orders:-

- 1. The plaintiff to amend his Complaint to enjoin TIMOTHY NYONGESA WANDABWA as the 1<sup>st</sup> defendant in this case.**
- 2. The said TIMOTHY NYONGESA WANDABWA, who I am informed cannot be traced, be served with the amended Complaint which should seek against him orders for specific performance of the agreement between him and the plaintiff and the registration of the suit land in the names of the plaintiff.**
- 3. The said TIMOTHY NYONGESA WANDABWA be served by way of an advertisement in any of the local newspapers within the next 45 days.**
- 4. This suit be mentioned for further directions on 19<sup>th</sup> September 2019.**

**Boaz N. Olao.**

**J U D G E**

**16<sup>th</sup> July 2019.**

**Ruling dated, delivered and signed in Open Court this 16<sup>th</sup> day of July 2019 at Bungoma.**

Plaintiff present

1<sup>st</sup> defendant present

Joy – Court Assistant present

**Boaz N. Olao.**

**J U D G E**

**16<sup>th</sup> July 2019.**