



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 811 OF 2013

(Formerly ELC NO. 1191 OF 1999)

WALTER JOE MBURU (suing as the administrator of the Estate of

ROSITA WALTER MBURU.....PLAINTIFF

VERSUS

ABDUL SHAKOOR SHEIKH (as administrator of the estate of

SHEIKH FAZAL NOORDIN ILLNHI).....1ST DEFENDANT

OPUS INVESTMENTS LTD.....2ND DEFENDANT

NATIONAL SOCIAL SECURITY FUND.....3RD DEFENDANT

THE COMMISSIONER OF LANDS AND

REGISTRAR OF TITLES.....3RD DEFENDANT

AND

CABINET SECRETARY

MINISTRY OF DEFENCE.....PROPOSED 5TH DEFENDANT

THE DEPARTMENT OF DEFENCE.....PROPOSED 6TH DEFENDANT

RULING

1. This is the chamber summons dated 25th June 2013, brought under Section 1A, 1B, 3, 3A, 19, 63 (c) and (e) of the Civil Procedure Act. Order 1, Rules 3, 7, 9, 10, 11, 14, Order 8 Rules 3, 5, 6 and 7, Order 40 Rules 1, 2, 4 and 10 of the Civil Procedure Rules and all other enabling provisions of the law.

1. *Spent.*

2. *Spent*

3. *That the proposed 5th and 6th defendants be joined or added as 5th and 6th defendants respectively on this suit.*

4. *That upon the proposed defendants being joined or added to this suit the applicant be granted leave to file and serve an amended plaint to include the said defendants and the applicants claim against the said defendants.*

5. *That an order of preservation do issue in respect to the suit property being parcel of land registered as LR 209/324/3.*

6. Spent

7. That an order of injunction do issue restraining the 5th and 6th defendants or proposed defendants their agents, servants, employees, or representatives or any person or entity claiming under them from further interfering with, entering upon, erecting structures upon, or in any way alienating, disposing of or otherwise wasting the suit property being parcel of land known as LR 209/324/3 pending the hearing and determination of this suit.

8. Spent.

9. That costs of this application be provided for.

2. The grounds are on the face of the application and are set out in paragraphs (a) to (i).
3. The application is supported by the affidavit of Walter Joe Mburu, the plaintiff/applicant herein sworn on the 25th June 2013.
4. It appears the application is not opposed. There are no replying affidavits or grounds of opposition on record.
5. I have considered the chamber summons and the affidavit in support. I have also considered the written submission of counsel and the authorities cited. The issue for determination is whether this application is merited.
6. It is the plaintiff's/applicant's case that it is necessary to amend the plaint to add the 5th and 6th proposed defendants. This is to enable the court to address all the issues in dispute.
7. **Order 8 Rule 3 (1)** of the Civil Procedure Rules provides that:-

“Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.”

8. Order 8 rule 3(5) also provides that:-

“An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”

9. The effect of the above provision is that this court has discretion to allow amendment of pleadings. I find that the plaintiff/applicant has made out a good case for amendment of the plaint and the same is allowed.

10. I find that he has demonstrated that the proposed 5th and 6th defendants are necessary parties to this suit. I rely on the case of **Central Kenya Limited vs Trust Bank Limited & 4 others CA Civil Appeal No. 222 of 1998**.

11. The plaintiff/applicant also seeks orders of temporary injunction against the proposed 5th and 6th defendants from further interfering, entering upon, erecting structures upon, alienating and disposing the suit property pending the hearing and determination of this suit. In paragraph 3 of his supporting affidavit the plaintiff/applicant deposes that he was evicted from the suit property in 1994. In paragraph 8 he states that the suit property was sold by the 3rd defendant/respondent in 2004. It is also clear from the foregoing that the plaintiff/applicant is not the registered owner of the suit property.

12. In the case of **Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another 1990 KLR 557 Bosire J (as he then was)** held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

I am not satisfied that the plaintiff/applicant deserves this kind of protection.

13. I find that he has failed to establish a prima facie case with probability of success at the trial. I therefore decline to grant any orders of temporary injunction.

14. The upshot of the matter is that the application succeeds only to the extent of prayers (3) and (4). I do grant the orders sought namely:-

(a) That leave be and is hereby granted to the plaintiff/applicant to amend his plaint within fourteen (14) days from the date of this ruling. The proposed 5th and 6th defendants be joined or added as 5th and 6th defendants respectively to this suit.

(b) That thereafter the amended plaint be served on the 5th and 6th defendants and all the defendants within fourteen (14) days and the defendants do have leave to file amended defences, and other necessary documents if need be within twenty one (21) days

upon service.

(c) That costs of this application be borne by the plaintiff/applicant.

It is so ordered.

Dated, signed and delivered in Nairobi on this 18TH day of September 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the Plaintiff

.....Advocate for the Defendants

.....Court Assistant