



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO.394 OF 2011**

**TERESIA NJERI NJUGUNA.....PLAINTIFF**

**VERSUS**

**VERONICA WANJIKU GITONGA.....1<sup>ST</sup> DEFENDANT**

**EMBAKASI RANCHING COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is the notice of motion dated 6<sup>th</sup> June 2017 brought under order 10 rule 11 and order 51 rule 1 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act and all enabling provisions of the law.
2. It seeks orders
  - (1) *Spent.*
  - (2) *The 2<sup>nd</sup> defendant/applicant be granted leave to file and serve its defence out of time and hence allowed to defend this suit on merit.*
  - (3) *Any other or further orders that this honourable court deem fair and just to grant for fair and proper determination of the dispute herein.*
  - (4) *The costs of this application be provided for.*
3. The grounds are on the face of the application and are set out in paragraphs (a) to (e).
4. The application is supported by the affidavit of Jack Kamau Wachira a surveyor of the 2<sup>nd</sup> defendant/applicant sworn on the 6<sup>th</sup> June 2017.
5. The application is opposed. There are grounds of opposition filed by the plaintiff/respondent dated 30<sup>th</sup> August 2017. The 1<sup>st</sup> defendant/respondent has sworn a replying affidavit in support of the 2<sup>nd</sup> defendant's/applicant's application.
6. The application was canvassed by way of written submissions.
7. I have considered the notice of motion and the affidavit in support. I have also considered the grounds of opposition and the replying affidavit. The issue for determination is whether this application is merited.
8. The plaintiff and the 1<sup>st</sup> defendant claim to have bought the suit property from the 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant is therefore a necessary party to these proceedings. Its presence will assist the court to fairly and justly adjudicate and determine this dispute.
9. I am guided by Article 159 (2) (d) of the Constitution which implores this court to administer justice without undue regard to technicalities.
10. I am satisfied that the 2<sup>nd</sup> defendant/applicant has given sufficient reasons to warrant this court to allow it to defend this suit.

11. Accordingly, I find merit in this application and grant the orders sought namely:-

*(a) That leave is granted to the 2<sup>nd</sup> defendant/applicant to file and serve its defence within 21 days from the date hereof.*

*(b) The plaintiff and the 1<sup>st</sup> defendant shall have corresponding leave to amend the plaint/defence respectively if need be.*

*(c) The costs of this application be borne by the 2<sup>nd</sup> defendant/applicant.*

It is so ordered.

**Dated, signed and delivered in Nairobi on this 24<sup>th</sup> day of October 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiff

Mr. Gachuhi for the 1<sup>st</sup> defendant and also holding brief for Mr. Ngato for the 2<sup>nd</sup> Defendant

Kajuju -Court Assistant