



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MIGORI

ELC CASE NO 76 OF 2018

GEORGE OGELLO OBIERO (Suing as the administrator

Ad Litem of the estate OF **GABRIEL**

OTIENO OBIERO -deceased).....**PLAINTIFF**

VERSUS

OKOTH MOSES ODHIAMBO.....**1ST DEFENDANT**

JOSEPH OTIENO OWICH.....**2ND DEFENDANT**

(both sued in their capacity as the joint administrators of the

Estate of **MORRIS ONYANGO JONYO- DECEASED)**

AND

KINDU CATHOLIC CHURCH.....**INTERESTED PARTY**

THOMAS OKONG'O.....**PROPOSED 3RD DEFENDANT**

RULING

1. On 21st January 2019, the plaintiff (applicant) George Ogello Obiero (suing as the administrator ad litem of the Estate of Gabriel Otieno Obiero-Deceased) through Adera and Kenyatta Advocates commenced the instant application by way of chamber summons of the same date under Order 1 Rule 10 of the Civil Procedure Rules, 2010 and sections 1A and 1B of the Civil Procedure Act (Cap 21). He is seeking the following orders:-

i. That Thomas Okong'o be enjoined in these proceedings as the 3rd defendant.

ii. That upon the joinder of the said Thomas Okong'o as the 3rd defendant, the plaintiff herein be granted leave to amend the originating summons filed herewith and serve the same on the defendants within fourteen (14) days for their response.

iii. That this honorable court be pleased to grant such further orders as it shall deem fit and just in the circumstances of this case.

iv. That the cost of this application be in the cause.

2. The application is hinged on five (5) grounds on its face namely;

i. That as the proceedings herein demonstrate, this matter revolves around the ownership of all that parcel of land known as North Sakwa/Kadera Lwala/166 (Hereinafter referred to as the suit property”).

ii. That the proposed 3rd defendant has filed documents before the Chief Magistrate's Court, Migori in CMCC NO. 19 OF 2018 alleging that he is in occupation of one acre of the property pursuant to a purported sale agreement dated December, 1979 between his father and the Estate of Maurice Onyango Jonyo, represented in these proceedings by the 1st and 2nd Defendant.

iii. That consequently, the proposed 3rd defendant party is a necessary party to these proceedings on basis of his claim to be in occupation of one acre of the property on account of the sale agreement allegedly made in December,1979.

iv. That the proposed 3rd defendant is therefore a necessary party to these proceedings whose presence would enable this court to finally and effectually determine the issues in controversy between the parties herein.

v. That the interest of justice therefore tilts in favour of allowing the Applicant's application herein.

3. The application is also premised on the applicant's supporting affidavit of even date and annexed documents marked as "GOOA to GOO-3" namely copies of title, plaint and defence and a certificate of confirmation of grant. Essentially, the applicant averred in consonant with the grounds set out in the application.

4. The proposed 3rd defendant (the respondent) who appears in person herein, opposed the application by his replying affidavit sworn on 23rd January, 2019. He averred, inter alia, that he is not willing to be joined as the 3rd defendant in this suit. He sought dismissal of the application.

5. The respondent stated that he was aware that 0.4 acres of the suit property was sold to his late father Okongo Magwanga in 1979 by one Jane Adhiambo and her mother in law Christine Omolo. That half of the said portion of land was donated to the interested party, Kindu Catholic Church by his late father who gave him the remaining half portion thereof. That the respondent intends to grab the applicant's rightful share of the suit property.

6. By his submissions dated 7th October 2019, counsel for the applicant stated briefly the facts of the matter, the relevant applicable law namely **Order 1 Rule 10 (supra) and the case of Catherine Nyambura –vs- DPP and 3 others (2018) eKLR** as regards the admission of a proper or necessary party into the proceedings. Counsel urged the court to allow the application as prayed.

7. On his part, the respondent filed submissions dated 5th March 2019 where he told the court that he has no claim against the family of Gabriel Obiero Otieno (Deceased). That the applicant should not interfere with his quiet possession of the suit property.

8. The application is brought under **Order 1 Rule 10 and sections 1A and 1B (supra)** which I note accordingly. The court has the unfettered discretion to order that the name of any person be joined as a plaintiff or defendant at any stage of the proceedings.

9. I have duly considered the entire application, the replying affidavit and rival submissions including **Catherine Nyambura case (supra)** cited therein. So, does it appear just and necessary to enjoin the applicant to the instant proceedings?

10. The **Concise Oxford English Dictionary 12th Edition** defines the term "Joinder" as :-

"The action of bringing parties together."

11. Similarly, the **Black's Law Dictionary 10th Edition** has fashioned the meaning of "Joinder" thus:-

"The uniting of parties or claims in a single law suit."

12. Who may be joinder as defendants in a suit ? **Order 1 Rule 3 of the Civil Procedure Rules,2010** provides:-

"All persons may joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise."

13. It is common ground that the dispute relates to the suit land as revealed in grounds 2 and 3 on the face of the application. It is further discerned in paragraph 3 of the supporting affidavit and paragraphs 4,7 and 8 of the respondents replying affidavit. The foregoing speak to the same or series of transactions involving the parties and the proposed 3rd defendant, inter se.

14. On that score, the joinder of the proposed 3rd defendant is necessary for the determination of the real matter in dispute. It is tailored to the effective and complete adjudication of the matter and in line with the overriding objective as provided **under section 3 of the Environment and Land Act,2015 (2011)**.

15. It is trite law that it is the court's duty to ensure that the respondent is made aware of the existing dispute and has the right to be served with the necessary papers. That the respondents has the right to appear or decline to appear in the matter; see **Ogada –vs- Mollin (2009) KLR 620**.

16. Having considered all that has been urged before me and the relevant law referred to hereinabove, I find the application full of merits. The same is bound to succeed.

17. Accordingly, the application dated 21st January 2019 mounted by the plaintiff/ applicant be and is hereby allowed in terms of orders (i) (ii), (iii) and (iv) sought therein.

18. It is so ordered.

DELIVERED SIGNED and DATED at MIGORI this 23rd day of OCTOBER 2019.

G.M.A. ONGONDO

JUDGE

In presence of:-

Mr. O. Awino learned counsel for 1st and 2nd defendants

Court Assistant- Tom Maurice