



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 137 OF 2017

[FORMERLY NAIROBI E & L CASE NO. 1204 OF 2006]

KENYA ANTI-CORRUPTION COMMISSION.....PLAINTIFF

VERSUS

KIMUMU SERVICE STATION LIMITED.....1ST DEFENDANT

PHOEBE AMIANI.....2ND DEFENDANT

WILSON GACHANJA.....3RD DEFENDANT

AND

THE CHIEF LAND REGISTRAR.....1ST APPLICANT

HON. ATTORNEY GENERAL.....2ND APPLICANT

RULING

1. The Chief Land Registrar and the Attorney General, the Applicants, seek vide the Motion dated the 16th May, 2019 to be enjoined in this suit as interested parties and thereafter be allowed to file their responses and the costs of the application be in the cause. The application is based on the seven (7) grounds on its face and is supported by the affidavit sworn by Sheillah Chepkemei Mwei, the Land Registrar, Uasin Gishu County, on the 16th May, 2019. Their case is primarily that they have been adversely mentioned by the plaintiff and defendants in their pleadings. That the title subject matter of the suit was allegedly issued by the 1st Applicant and that they remain necessary parties for implementation of the order to be issued by the court. That therefore, the Applicants are necessary parties to be enjoined to enable the court effectively and completely adjudicate upon, and settle all the matters in question. The application is not opposed by the plaintiffs. The 1st defendant opposed the said application dated though their replying affidavit sworn by Japheth Magut, the director, on the 9th September, 2019. Their case is that the suit is partly-heard and the Applicants are not necessary parties for the just, effectual and conclusive determination of the matter.

2. Kenya Anti-Corruption Commission, the plaintiff, vide the Motion dated the 28th May, 2019 seeks for extension of time to file a further list of documents and copies of documents. They also seek that the documents dated and filed on the 28th May, 2019 be deemed properly on record and costs be in the cause. The application is based on the six (6) grounds on its face and is supported by the affidavit sworn by Christine Natome, Advocate for the Plaintiff, on the 28th May, 2019. Their case is that the documents they wish to introduce in this case are public documents and a report dated the 24th April, 2019 which became available to the plaintiff after the time granted to file them had expired. That the court has discretion to enlarge the time to file the said documents. The application is opposed by the 1st defendant through the replying affidavit sworn by Japheth Magut, the director, on the 9th September, 2019. That it is the 1st defendant's case that the application is made in bad faith and is an afterthought as the suit was filed in 2006. That through the consent of the 21st February, 2019 the plaintiff was to file and serve further statements and documents by 7th March 2019, they filed them late on the 26th March, 2019 and served on the 28th March, 2019. That the 1st defendant filed theirs on the 9th April, 2019. That contrary to the said consent, the plaintiff purported to file a further list of documents and additional documents without formally seeking leave as directed on the 11th April, 2019. That the introduction of additional documents at this stage would be against natural justice, and fair hearing as enshrined by **Article 50(1) of the Constitution**.

3. Kimumu Service Station Limited, the 1st defendant, seeks vide the Motion dated 10th September, 2019 for striking out from the court

record the plaintiff's further list of documents dated and filed on the 28th May, 2019 and all copies of documents attached to it, and for costs of the application to be borne by the plaintiff. The application is based on the grounds on its face marked (a), (c) to (k) and is supported by the affidavit sworn by Japheth Magut, Advocate for the 1st defendant, on the 10th September, 2019. That their case is that during the hearing of 10th April 2019, the plaintiff sought orally for leave to file a ground report but the court directed that a formal application be filed. That however, the plaintiff filed and served a further list of documents on the 28th May, 2019 without leave, and it should be expunged from the record. The application is opposed by the plaintiff through their four (4) grounds of opposition dated the 19th September, 2019 summarized as follows:

§ That the application is an abuse of the court process as it purports be a response to the Motion dated the 25th May, 2019 and arrest its hearing and determination.

§ The application was made in bad faith and that there was undue delay in filing it.

4. The learned counsel for the parties appeared in court on the 19th September, 2019 when the court directed among others that the three applications would be heard together on the 26th September, 2019. That the counsels were then heard on the date scheduled for and against the three applications as appropriate.

5. The following are the issues for the court's determinations;

(a) Whether the Chief Land Registrar and the Attorney General are necessarily parties in the determination of the issues in the suit, and if so, whether they should be enjoined as interested parties.

(b) Whether the plaintiff has made a reasonable case for leave to file and serve additional list of documents and documents to be granted at this stage.

(c) Whether the 1st defendant has made a reasonable case for expunging the list of documents dated and filed on the 28th May, 2019 and the attached documents by the plaintiff.

(d) Who meets the costs of each of the three applications?

6. The court has considered the grounds on each of the three applications, affidavit evidence, grounds of opposition, oral submissions by the three learned counsel for the Applicants, Plaintiff and 1st defendant respectively, and come to the following findings;

(a) That though pleadings had long closed and hearing of the main suit commenced on the 31st October, 2017 and continued on the 9th October 2018, the parties through their counsel entered a consent on the 21st February, 2019 to file and exchange further witness statements and documents within the agreed timelines. That in view of the provisions of **Order 3 Rule 2 of the Civil Procedure Rules** that witness statements and documents should be filed with the pleadings of the parties, provided that with leave of court statements may be filed and served at least fifteen (15) days to the trial conference, the consent of 21st February, 2019 somehow re-opened the window for further filing and exchange of statements and documents within the agreed timelines.

(b) That pursuant to the said consent order, the plaintiff filed and served their witness statements on the 26th March, 2019 and the 1st defendant filed and served their further list of documents on the 9th April, 2019. That the quest by the plaintiff orally to be allowed to file and serve further list of documents on the 10th April, 2019 did not succeed as the court directed that a formal application to be filed. That the filing and serving of the plaintiff's further list of documents dated the 28th May, 2019 was therefore filed in complete disregard of the court's express directions of 10th April, 2019 and without leave of the court. That the said list and the documents attached to it are improperly on the court record and the 1st defendant's Motion dated 10th September, 2019 has merit. The said application is allowed in terms of prayer 4 and 5.

(c) That from the affidavit evidence presented in support of the Motion dated the 16th May 2019, the court is satisfied that though the matter is partly heard, the inclusion of the two Applicants in the suit will assist the parties to ventilate their respective cases more exhaustively, and enable the court to determine all the issues raised comprehensively and completely. The two applicants are therefore enjoined as the 1st and 2nd interested parties in the order they appear in the application. That further they are granted 21 (twenty-one) days to file and serve their replies to the pleadings and the other parties granted corresponding leave after service. The costs of the application will be in the cause.

(d) That in respect of the Motion dated the 28th May, 2019 and further to the consent of the 21st February 2019 that allowed parties to file and exchange further documents and statements, and in view of the finding in (c) above allowing the joinder of the two interested parties, the court finds merit in the application for leave to file and serve further list of documents. That the 1st defendant be granted corresponding leave after service. That the plaintiff will meet the 1st defendant's costs in this application as it was their failure to act within the timelines of the consent order of 21st February, 2019 that occasioned the filing of the application.

7. That flowing from the foregoing, the court orders as follows:

(a) That the 1st defendant's application dated 10th September, 2019 has merit and the plaintiff's further list of documents dated and filed on the 28th May, 2019 and the attached documents are hereby expunged from the court's record for having been filed without

leave. The plaintiff to pay the 1st defendant's costs in the application.

(b) That the plaintiff's Motion dated and filed on the 28th May 2019 is hereby allowed limited to allowing the filing and service of a further list of documents with its annexures within the next fourteen (14) days. The plaintiff will pay the 1st defendant costs of the application nevertheless. The 1st defendant granted corresponding leave after service.

(c) The Motion dated the 16th May, 2019 be and is hereby allowed enjoining the Chief Land Registrar and the Attorney General as the 1st and 2nd interested parties respectively. The costs be in the cause. The interested parties do file and serve their responses in fourteen (14) days and the parties served granted corresponding leave after service.

Orders accordingly.

Dated and delivered at Eldoret this 23rd day of October, 2019.

S. M. KIBUNJA

JUDGE

Ruling read in open court in the presence of:

Mr. Kuria for Mokuwa for Plaintiff.

M/s Odwa holding brief for Mutiso for 1st Defendant.

No appearance for 2nd Defendant

Mr. Kuria for Interested Parties

Christine: Court Assistant